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

WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Memorandum of August 3, 2010

Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Political Appointees

Memorandum for the Assistant to the President and Chief of Staff [and] The Heads of Executive Departments and Agencies

At a time when so many American families are struggling to make ends meet, I am committed to making sure the Federal Government is spending the taxpayers' money wisely and carefully, and cutting costs wherever possible. I am committed to ending programs that do not work, streamlining those that do, and bringing a new responsibility for stewardship of tax dollars. Like households and businesses across the country, the Federal Government is tightening its belt. This effort began during my first days in office, when I froze the salaries of the senior members of my White House Staff.

As a next step in this effort, I direct you to suspend cash awards, quality step increases, bonuses, and similar discretionary payments or salary adjustments to any politically appointed Federal employee, commencing immediately, and continuing through the end of Fiscal Year 2011. I also direct the Office of Personnel Management to issue guidance, in consultation with the Office of Management and Budget, to assist departments and agencies in implementing this policy.

In addition to these actions freezing discretionary payments, I have proposed in my Budget for Fiscal Year 2011 a salary freeze for senior political appointees throughout the Federal Government. Unlike the administrative action I have taken today in this memorandum, my proposed salary freeze requires legislation, so it cannot be implemented absent legislative action by the Congress.

I appreciate the hard work of our Federal workforce, and understand how important these payments can be to many workers and their families. Yet like households and businesses across the country, we need to make tough choices about how to spend our funds.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. Nothing in this memorandum shall be construed to affect payments or salary adjustments for Federal employees who are not political appointees. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, August 3, 2010

[FR Doc. 2010–19596
Filed 8–5–10; 8:45 am]
Billing code 3110–01–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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245–AG09

Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations governing appeals before the SBA's Office of Hearings and Appeals (OHA). OHA is SBA's administrative tribunal, and these regulations are procedural by nature. These revisions codify current practices to make them more transparent, and clarify some existing rules of procedure to make them more understandable particularly to OHA's many *pro se* litigants.

DATES: *Effective Date:* This rule is effective September 20, 2010 without further action, unless significant adverse comment is received by September 7, 2010. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register.**

Applicability Date: This rule applies to all appeals filed on or after the Effective Date.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG09, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD/ROM submissions:* Delorice Price Ford, Assistant Administrator for Hearings and Appeals, U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Delorice Price Ford, Assistant Administrator for Hearings and Appeals, U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov,* please submit the information to Delorice Price Ford, Assistant Administrator for Hearings and Appeals, U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *Delorice.Ford@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Delorice Price Ford, Assistant Administrator for Hearings and Appeals, at (202) 401–8200 or *Delorice.Ford@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Small Business Administration is amending its regulations governing appeals before the SBA's Office of Hearings and Appeals (OHA). OHA is SBA's administrative tribunal that provides an independent, quasi-judicial forum to appeal various types of decisions. The matters addressed on appeal include: SBA formal size determinations; contracting officer designations of North American Industry Classification System (NAICS) codes for procurements government-wide; certain SBA determinations relating to 8(a) BD program eligibility, graduation, suspension, and termination; Service-Disabled Veteran-Owned Small Business Concern status appeals, SBA employee dispute appeals; and employee salary offsets.

In order to increase transparency and understanding of its appeals process, SBA is amending its hearings and appeals regulations to codify current practices, and to clarify certain existing regulations, particularly for the many *pro se* litigants who file appeals with OHA. Some of these revisions change existing procedures; however, we believe these revisions have minimal impact on the public.

Among other things, these amendments codify OHA's longstanding practices on access to appeal files and protective orders as well as its practice of citing its prior decisions as precedent. These amendments also permit the filing and service of pleadings by e-mail; limit the number of pages for each appeal petition unless OHA approves in advance; and clarify the time period for filing an appeal. SBA is also adding provisions promoting the use of alternative dispute resolution procedures generally, and a new subpart on SBA employee dispute resolution procedures.

Consideration of Comments. SBA is publishing this rule as a direct final rule because it believes that this rule is routine and non-controversial. This rule merely codifies existing procedures and clarifies practices that are also purely procedural in nature. Because this rule affects only the procedural regulations of SBA's Office of Hearings and Appeals, SBA believes that notice and comment is unnecessary. Thus, SBA believes there is good cause to bypass notice and comment and proceed to a direct final rule pursuant to 5 U.S.C. 553(b). SBA believes that this direct final rule will not elicit any significant adverse comments. However, if such comments are received, SBA will publish a timely notice of withdrawal in the **Federal Register.**

II. Section-by-Section Analysis

A. Subpart A

SBA is adding a definition for "business day" to § 134.101. SBA is making several non-substantive revisions to § 134.102 on OHA's jurisdiction. These revisions include: removing from § 134.102(k) a lengthy definition that also appears in § 134.101; removing and reserving § 134.102(d), (f), and (m) to conform to the 2009 elimination of OHA appeals of SBA enforcement actions against SBA lenders, intermediaries, and non-lending technical assistance providers, 73 FR 75524, Dec. 11, 2008; removing and reserving § 134.102(n) to conform to the 2008 elimination of OHA appeals for Small Disadvantaged Business determinations, 73 FR 57495, Oct. 3, 2008; adding to § 134.102(r) a reference to new subpart H and updating website

information; and adding to § 134.102(t) a list of the means by which the Administrator may refer a proceeding to OHA. SBA is removing and reserving § 134.103, on time periods and deadlines, and placing these rules in § 134.202(d).

B. Subpart B

SBA is shortening the subpart heading to read "Subpart B—Rules of Practice". Section 134.201 sets out where to locate the rules applying to specific types of OHA proceedings and how to determine which rule governs in the event of conflicting rules. SBA is making non-substantive revisions to this section to list more of the proceedings to which specific rules apply and to increase clarity.

Section 134.202(a) governs the commencement of cases initiated by a party other than SBA. The current rule provides a 45-day deadline for filing an appeal petition and an incomplete list of the types of proceedings that have different deadlines. SBA is amending § 134.202(a) by replacing the 45-day deadline with a reference to the regulations governing the specific type of appeal. SBA is also adding a new rule providing that, where the SBA action or determination being appealed contains a different time period (or deadline) for filing an appeal petition than does the applicable regulation, then the longer time period (or later deadline) governs. Thus, a petitioner will have the benefit of the longer time period or deadline.

SBA is adding to § 134.202 new paragraph (d) on the calculation and modification of time periods and deadlines. The new § 134.202(d) provides a clearer explanation of the rules currently at § 134.103 and a detailed example of how to count days. OHA staff receive many inquiries on how to count days and where to find this rule. SBA believes the revisions, example, and relocation to § 134.202(d) will reduce the number of inquiries.

Section 134.203 sets out the components of an appeal petition. SBA is adding the word "appeal" to the section heading, a reference to § 134.102 in § 134.203(a)(1), and the petitioner's e-mail address to the requirements of § 134.203(a)(5). SBA is removing current § 134.203(a)(7) and the second sentence of current § 134.203(b). The provisions in those places are redundant.

New § 134.203(d) will limit an appeal petition to 20 pages unless prior leave is granted, and requires a table of authorities only if more than 20 authorities are cited. New § 134.203(d) also provides additional guidance to petitioners, such as that it is unnecessary to attach documents already submitted to SBA, because SBA will submit these directly to OHA.

New § 134.203(e) has the heading, "Motion for a more definite appeal petition." It revises the regulation currently at § 134.205. Section 134.203(e) will shorten, from 15 to five days, the time period for the respondent (almost invariably the SBA) to file this motion; will permit the Judge to order a more definite appeal petition on his or her own initiative; and will permit the Judge to dismiss an appeal with prejudice for the petitioner's failure to comply with such an order. New § 134.203(f) informs petitioners that OHA issues a Notice and Order after an appeal petition is filed and that, should a party not receive this document, it should contact OHA.

Section 134.204 concerns the filing and service of pleadings and other submissions. SBA is amending § 134.204 to include introductory text stating that a submission requires filing, service, and a certificate of service. The only substantive change is the addition of e-mail to the permitted methods of filing and service set out in § 134.204(a). Revised § 134.204(b) includes OHA's e-mail address for filings and a reference to 28 U.S.C. 1746, a provision helpful to parties in preparing exhibits. Current § 134.204(e) has been moved to § 134.204(c)(4) and revised to include a reference to the section on protective orders. Section 134.204(d), on the certificate of service, has been revised for clarity and to accommodate e-mail service.

SBA is moving current § 134.205 to § 134.203(e), as discussed above, and replacing § 134.205 with a new section that has the heading, "The appeal file, confidential information, and protective orders." New § 134.205 fully states in one place OHA's longstanding practices involving confidential information and access to appeal files.

New § 134.205(a) sets out the typical contents of an appeal file, and § 134.205(b) describes the procedure for a party to file with OHA pleadings containing the party's own confidential information, including service of redacted copies on other non-government parties. New § 134.205(c) explicitly refers members of the public to the Freedom of Information Act (FOIA), 5 U.S.C. 552, for access to appeal files. Section 134.205(d) codifies OHA's practice of permitting a party in a pending appeal to examine and copy its own submissions in the appeal file, as well as any other information there that would not be exempt from disclosure under the FOIA. This "party access" is a matter of due process, and parties typically use it to ensure that the appeal file does contain all of the party's own submissions, including any sent previously to the SBA office that issued the determination being appealed.

Section 134.205(e) codifies OHA's longstanding practice of issuing protective orders that set out the terms under which outside counsel may have access to all information in a pending appeal file except for tax returns and privileged information. New § 134.205(f) codifies OHA's longstanding practice of publishing its decisions even though these decisions may contain confidential information, and procedures to request a redacted public decision. The only substantive change from current practice in new § 134.205 is that OHA's Web site will contain detailed information on its protective order procedure.

Section 134.206 concerns respondents' pleadings. SBA has made three revisions to this section. The first removes the last sentence in § 134.206(a)(1), a sentence rendered unnecessary by the addition of subpart H. The second rewrites § 134.206(b) to codify OHA practices in cases where the appeal of an SBA determination requires the Agency to file and serve an administrative record, practices which for many years have been set out in the initial notice and order. The third adds § 134.206(e) to codify OHA practice relating to petitioners' replies to responses.

SBA is amending § 134.207 to include references to § 134.211 and to explicitly state that the Judge, on his or her own initiative, may order an amendment or a supplemental pleading. SBA is amending § 134.209 to note that false statements in pleadings are subject to criminal penalties, and that misconduct is subject to sanctions, with a reference to § 134.219.

Section 134.211 governs motion practice. SBA is changing two deadlines in this section. First, the deadline for responses to a motion, in § 134.211(c), changes from 20 days after service of the motion to 15 days. The 20-day period for response is much longer than needed, and can delay the issuance of a decision. Further, a party needing more time to respond to a motion has the option of moving for more time under § 134.211(f). Second, the deadline for filing a motion to extend time, in § 134.211(f), has been changed from "two days" before the original deadline to "two business days". This change will eliminate the uncertainty in counting back days when a weekend or a Federal holiday is encountered. Other revisions in this section are to clarify existing procedures.

SBA is changing the words "summary decision" in the heading and text of § 134.212 to "summary judgment", to more accurately reflect the procedures described therein, and to avoid confusion with the summary decision set out in § 134.226(a)(3). SBA also is shortening the deadline, in § 134.212(a), for filing a response to either the original motion or a cross-motion from the current 20 days after service to 15 days. A party needing more time to respond may move for more time under § 134.211(f). New § 134.212(a)(4) establishes a deadline of 15 days for the respondent to file its answer or response under § 134.206 in the event the respondent has not yet made this filing, the Judge denies a motion for summary judgment, and the Judge does not establish a different deadline. Other revisions to § 134.212 clarify the rule.

SBA is amending § 134.213(c) by adding a reference to the section on protective orders. SBA is amending § 134.214, on subpoenas, by shortening the deadlines related to motions to quash from 10 days to five days; and by removing two unneeded sentences.

Section 134.216 concerns alternative dispute resolution (ADR). SBA adds two new provisions to this section to further Federal policy encouraging administrative agencies to use ADR (*see* 5 U.S.C. 571–572), and SBA's firm commitment to the greater use of ADR (*see* 64 FR 27843, May 21, 1999). The first provision adds new § 134.216(b) to permit a Judge to offer ADR to the parties. The second provision adds new § 134.216(c) to permit designation of either a Judge or an OHA attorney to serve as a neutral in ADR procedures. An OHA-provided neutral will not be involved in the adjudication if mediation fails to resolve all issues in a case.

SBA is revising the last sentence of § 134.218(c) to clarify that a denial of a motion for recusal may be appealed "within 5 days" rather than "immediately".

SBA is amending § 134.219 to list five sanctions a Judge may apply for misconduct by a party or its counsel. These sanctions include: Ordering a pleading or evidentiary filing to be struck from the record; dismissing an appeal with prejudice; suspending counsel from practice before OHA; filing a complaint with the applicable State bar; and taking any other action that is appropriate to further the administration of justice.

SBA is amending § 134.222, on oral hearings, to delete paragraph (a)(3), a provision applicable only to administrative wage garnishment cases, which OHA no longer hears; and to correct typographical errors in § 134.222(d). SBA is amending § 134.223 to clarify that the weight given to hearsay evidence is at the Judge's discretion.

SBA is removing and reserving § 134.224, on standards for decision. The standard for decision is provided in the regulations pertaining to each specific type of case, and this section causes confusion. SBA is removing § 134.225(b), on public access to the record, as unnecessary given its inclusion in § 134.205.

SBA is amending § 134.226(a) to add two new provisions that codify, in part, existing practices. New § 134.226(a)(2) provides that all OHA decisions create precedent, unless either a regulation governing a specific type of appeal provides otherwise, or the Judge designates a particular decision as not to be cited as precedent. The practice of citing its prior decisions as precedent has been an accepted part of OHA's quasi-judicial function since OHA's inception in 1983. SBA believes it appropriate to codify the practice.

New § 134.226(a)(3) permits issuance of an abbreviated version of a decision where the Judge finds that a full decision would not advance understanding of law, regulation, or policy and the underlying facts and law are of a routine and non-complex nature. OHA's longstanding practice is to issue short decisions and orders dismissing appeals in appropriate cases, and this rule codifies the practice.

C. Subpart C

SBA makes several changes to subpart C. First, SBA amends § 134.302(b) to correct an SBA official's title. Second, SBA amends § 134.305 to require that a size appeal include a copy of the size determination being appealed, and to add an e-mail address and fax number for service to the Associate General Counsel for Procurement Law. Third, SBA is amending § 134.306(b) to permit a contracting officer to provide an electronic link to the solicitation in lieu of a paper copy. Fourth, SBA makes a technical revision to § 134.315 to conform to a revision made in § 134.225.

Finally, SBA adds new section § 134.318 regarding NAICS appeals. This section references certain sections of part 121 that apply to NAICS appeals, clarifies the effect of OHA's decision in a NAICS appeal, and permits early, summary dismissal of a NAICS appeal in certain instances to codify current, longstanding practice.

D. Subpart D

SBA amends § 134.403 to permit service of the appeal petition by e-mail, and to make various editorial revisions.

SBA is also deleting § 134.404 as redundant, and replacing it with a new section providing a 45-day deadline for filing an 8(a) appeal. The 45-day deadline does not represent any change, as it is the default deadline in current § 134.202. Because SBA is revising § 134.202 to direct parties to the regulations governing specific appeals, the regulations governing 8(a) appeals will need to contain the deadline. Thus, it is being added here. SBA is also revising § 134.405 to eliminate the reference to § 134.202 contained there.

In § 134.406, SBA makes revisions to paragraphs (c) and (e). Section 134.406(c) concerns the content of the administrative record in 8(a) appeals. The revised rule adds a heading to § 134.406(c) and divides it into paragraphs (c)(1) to (c)(3) for ease of use. The revised rule also adds one sentence at the end of new paragraph (c)(1) and two sentences at the end of new paragraph (c)(2) to codify and make more transparent longstanding practices regarding SBA claims of privilege and petitioner objections. Section 134.406(e) concerns remands in 8(a) appeals. The revised rule adds a heading to § 134.406(e) and divides it into paragraphs (e)(1), (e)(2), and (e)(4) for ease of use. SBA also adds new paragraph (e)(3) to codify the longstanding practice of remanding an 8(a) appeal where the SBA determination being appealed raises a new ground not included in the initial SBA determination. Apart from these revisions, and the correction of an SBA official's title in paragraph (e)(1), there are no other changes to the text of § 134.406.

E. Subpart E

SBA is amending § 134.505 to require the appeal petition in Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) cases to include a copy of the determination being appealed and the petitioner's e-mail address. The revisions also provide the e-mail addresses for the SBA officials whom the petitioner must serve.

F. Subpart F

SBA corrects cross-references in §§ 134.601, 134.602, 134.606, and 134.611 to conform with redesignations made to this subpart in 1998 and 2005. 63 FR 35766, June 30, 1998; 70 FR 8927, Feb. 24, 2005.

G. Subpart H

SBA is adding Subpart H setting forth the rules of practice for OHA appeals of SBA Employee Disputes. Subpart H replaces the portions of Standard Operating Procedure (SOP) 37 71 that deal with OHA appeals, and codifies several items of longstanding OHA practice.

Compliance With Executive Orders 12866, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this rule does not constitute a "significant regulatory action" under Executive Order 12866. This rule codifies current practices of the SBA's Office of Hearings and Appeals and clarifies other practice rules. As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of that Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. 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 layers of government, as specified in the Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose new reporting or record keeping requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities.

However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rulemaking addresses the rules of practice governing cases before the Small Business Administration's (SBA) Office of Hearings and Appeals (OHA). OHA is SBA's administrative tribunal, and these regulations are procedural by nature. This rule codifies current practices to make them more transparent, and clarifies other rules. The increased clarity and transparency of OHA's procedural rules will benefit small businesses litigating matters before OHA, especially those litigating *pro se.* Few of these revisions change existing procedures, and those that do have minimal effect on small entities.

Therefore, within the meaning of the RFA, SBA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rulemaking is procedural and imposes no significant additional requirements on small entities.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

■ For the reasons stated in the preamble, SBA amends part 134 of title 13 of the Code of Federal Regulations as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 637(m), 648(1), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart A—General Rules

■ 2. Amend § 134.101 by adding the definition of "Business day", to read as follows:

§ 134.101 Definitions.

* * * * *

Business day means any day other than a Saturday, Sunday, or a Federal holiday.

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■ 3. Amend § 134.102 by removing and reserving paragraphs (d), (f), (m), and (n); and by revising paragraphs (k), (r), (s), and (t) to read as follows:

§ 134.102 Jurisdiction of OHA.

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(d) [Reserved]

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(f) [Reserved]

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(k) Appeals from size determinations and NAICS code designations under part 121 of this chapter;

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(m) [Reserved]

(n) [Reserved]

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(r) The decision of the Appropriate Management Official in SBA Employee Dispute Resolution Process cases (Employee Disputes) under Standard Operating Procedure (SOP) 37 71 (available at *http://www.sba.gov/tools/resourcelibrary/sops/index.html* or through OHA's Web site *http://www.sba.gov/oha*) and subpart H of this part;

(s) Appeals from Women-Owned Small Business or Economically-Disadvantaged Women-Owned Small Business protest determinations under part 127 of this chapter; and

(t) Any other hearing, determination, or appeal proceeding referred to OHA by the Administrator of SBA, either through an SOP, Directive, Procedural Notice, or individual request by the Administrator to the AA/OHA.

§ 134.103 [Removed and Reserved]

■ 4. Remove and reserve § 134.103.

■ 5. Revise the heading for subpart B to read as follows:

Subpart B—Rules of Practice

■ 6. Revise § 134.201 to read as follows:

§ 134.201 Scope of the rules in this subpart B.

(a) The rules of practice in this subpart apply to all OHA proceedings except:

(1) Where another subpart of this part, pertaining to a specific type of OHA proceeding, provides a different rule; or

(2) Where another part of this chapter, pertaining to a specific type of OHA proceeding (or SBA program allowing appeals to OHA), provides a different rule (see § 134.102).

(b) For specific types of OHA proceedings, the rules of practice are located as follows:

(1) For appeals from size determinations and NAICS code designations, in subpart C of this part (§ 134.301 *et seq.*);

(2) For 8(a) BD appeals, in subpart D of this part (§ 134.401 *et seq.*);

(3) For appeals from Service-Disabled Veteran-Owned Small Business Concern protest determinations, in subpart E of this part (§ 134.501 *et seq.*);

(4) For applications under the Equal Access to Justice Act, in subpart F of this part (§ 134.601 *et seq.*);

(5) For appeals from Women-Owned Small Business (WOSB) and Economically-Disadvantaged WOSB protest determinations, in subpart G of this part (§ 134.701 *et seq.*);

(6) For appeals relating to SBA employee disputes, in subpart H of this part (§ 134.801 *et seq.*); and

(7) For proceedings under the Program Fraud Civil Remedies Act, in part 142 of this chapter.

(c) If a rule in this subpart conflicts with a rule pertaining to OHA in another subpart of this part or in another part of this chapter, the latter rule shall govern.

■ 7. Amend § 134.202 by revising paragraph (a) and by adding new paragraph (d), to read as follows:

§ 134.202 Commencement of cases.

(a) A party other than the SBA may commence a case by filing an appeal petition.

(1) The filing deadline is contained in the SBA regulations governing the specific type of appeal.

(2) Where the SBA action or determination being appealed states a different time period (or deadline) for filing an appeal petition than does the applicable regulation, the longer time period (or later deadline) governs.

* * * * *

(d) *Calculation and modification of time periods and deadlines.* (1) *Calculation of a deadline when the time period is given in days.* (i) Do not count the day the time period begins, but do count the last day of the time period.

(ii) If the last day is Saturday, Sunday, or a Federal holiday, the time period ends on the next business day.

Example: On Monday, a Judge orders a party to file and serve a document within (or no later than) five days. The time period begins on Monday, so the first day to count is Tuesday. The second, third, and fourth days are Wednesday, Thursday, and Friday. The fifth day is Saturday, so the time period rolls over to the next business day, which is Monday. The deadline is Monday (or Tuesday if Monday is a Federal holiday).

(2) *Modification of a time period or deadline.* (i) A Judge may modify any time period or deadline, except:

(A) The time period governing commencement of a case (*i.e.,* when the appeal petition may be filed); and

(B) A time period established by statute.

(ii) A party may move for an extension of time pursuant to § 134.211.

■ 8. Amend § 134.203 as follows:

■ a. Revise the section heading;

■ b. Revise paragraphs (a) and (b); and

■ c. Add new paragraphs (d), (e), and (f).

§ 134.203 The appeal petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction (see § 134.102);

(2) A copy of the SBA determination being appealed, if applicable, and the date the determination was received by the petitioner;

(3) A clear and concise statement of the factual basis of the case and applicable legal arguments;

(4) The relief being sought;

(5) The name, address, telephone number, facsimile number, e-mail address, and signature of the petitioner or its attorney; and

(6) A certificate of service (see § 134.204(d)).

(b) If the applicable subpart of this part 134 (or the program regulations) requires other documents or information with the appeal petition, these must also be included.

* * * * *

(d) *Format.* (1) An appeal petition should be on 8.5″ x 11″ paper with a clear type at least 12 point in size. Preferably, double-space the main text and use 1″ margins all around. Number each page. A separate cover letter is not needed. A table of contents is optional. Hard copies of documents sent by facsimile or electronic mail are not needed unless specifically requested.

(2) The maximum length of an appeal petition (not including attachments) is 20 pages, unless prior leave is sought by the petitioner and granted by the Judge. A table of authorities is required only for petitions citing more than twenty cases, regulations, or statutes.

(3) Clearly label any exhibits and attachments. Do not include documents already submitted to SBA in connection with the matter being appealed. SBA will submit these directly to OHA.

(e) *Motion for a more definite appeal petition.* A respondent, SBA, or a contracting officer (for NAICS appeals) may, not later than five days after receiving a petition, move for an order to the petitioner to provide a more definite appeal petition or otherwise comply with this section. A Judge may order a more definite appeal petition on his or her own initiative.

(1) A motion for a more definite appeal petition stays the respondent's time for filing an answer or response. The Judge will establish the time for filing and serving an answer or response.

(2) If the petitioner does not comply with the Judge's order to provide a more definite appeal petition or otherwise fails to comply with applicable regulations, the Judge may dismiss the petition with prejudice.

(f) *Notice and Order.* After an appeal petition is filed, OHA will issue a Notice and Order and serve it upon all known parties (or their attorneys). If a party does not receive a Notice and Order, it should contact OHA.

■ 9. Revise § 134.204 to read as follows:

§ 134.204 Filing and service requirements.

All pleadings or other submissions must be filed with OHA and served on all other parties or their attorneys. Each submission requires a certificate of service.

(a) *Methods of filing and service.* E-mail, mail, delivery, and facsimile are all permitted unless a Judge orders otherwise.

(1) E-mail constitutes any system for sending and receiving messages electronically over a telecommunications network. The sender is responsible for ensuring that e-mail software and file formats are compatible with the recipient and for a successful, virus-free transmission.

(2) Mail includes any service provided by the U.S. Postal Service. Mail (except "Express Mail") is not recommended for time-sensitive filings.

(3) Delivery is personal delivery by a party, its employee, its attorney, or a commercial delivery service.

(4) Facsimile submissions should not exceed 30 pages. Contact OHA before faxing longer submissions. Follow-up originals or "hard copies" are not required unless OHA or another party specifically requests them.

(b) *Filing.* Filing is the receipt of pleadings and other submissions at OHA. Filers may call OHA to verify receipt. OHA's telephone number is (202) 401–8200.

(1) *OHA's address.* OHA accepts filings: by e-mail at *OHAFilings@sba.gov;* by mail or delivery at Office of Hearings and Appeals, U.S. Small Business

Administration, 409 Third Street, SW., Washington, DC 20416; and by facsimile at (202) 205–7059.

(2) The date of filing is the date the submission is received at OHA. Any submission received at OHA after 5 p.m. eastern time is considered filed the next business day.

(3) *Exhibits.* An exhibit, whether an original or a copy, must be authenticated or identified to be what it purports to be. Parties are referred to 28 U.S.C. 1746.

(4) *Copies.* No extra copies of pleadings or other submissions need be filed. If a document is offered as an exhibit, a copy of the document will be accepted by the Judge unless—

(i) a genuine question is raised as to whether it is a true and accurate copy; or

(ii) it would be unfair, under the circumstances, to admit the copy instead of the original.

(c) *Service.* Service means sending a copy of a pleading or other submission filed with OHA to another party.

(1) Complete copies of all pleadings and other submissions filed with OHA must be served upon all other parties or, if represented, their attorneys, at their record addresses.

(2) The date of service is as follows: for e-mail and facsimile, the date the copy is sent; for personal delivery, the date the copy is given to the party, its attorney, or the commercial delivery service (if one is used). For mail, date of service is postmark date; in absence of a legible postmark, there is a rebuttable presumption that the copy was mailed five days before the served party's receipt.

(3) *SBA address.* The correct office(s) of SBA must be served, as required by the applicable program regulations, by other subparts of part 134, or by the instructions on the SBA determination being appealed. If the SBA office for service is not specified elsewhere, serve: Office of General Counsel, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

(4) *Confidential information.* If a pleading or other submission contains proprietary or confidential information, that information may be redacted (deleted) from any copies served upon non-government parties. Counsel for those parties may access the redacted information only under the protective order procedure described in § 134.205.

(d) *Certificate of service.* A certificate of service shows how, when, and to whom service was made. Each submission to OHA must include a certificate of service. The certificate should state: "I certify that on [date], I served the foregoing [type of submission] by [e-mail, mail, Express Mail, personal delivery, commercial delivery service, facsimile] upon the following". List the name and address of each party served, and either the facsimile number or the e-mail address (if applicable). The individual serving the submission must sign the certificate and either print or type his or her name and title.

■ 10. Revise § 134.205 to read as follows:

§ 134.205 The appeal file, confidential information, and protective orders.

(a) *The appeal file.* The appeal file includes: all pleadings and other submissions; all admitted evidence; any recordings and transcripts of proceedings; the solicitation and amendments; in the case of an appeal of an SBA determination, the entire record on which that determination was based (*i.e.,* the administrative record, protest file, area office file); and any orders and decisions that have been issued.

(b) *Confidential business and financial information.* An appeal file usually contains confidential business and financial information pertaining to the party whose eligibility (as a small business, SDVO SBC, etc.) is at issue. A party may redact its own confidential business and financial information from the copies of its submissions it must serve on other non-government parties (usually protesters). A party served with redacted submissions must file and serve any objections to the redactions within two business days of its receipt of the submissions. The Judge then will rule on the objections and, if necessary, order the service of revised submissions.

(c) *Public access.* Except for confidential business and financial information, source selection sensitive information, income tax returns, and other exempt information, the appeal file is available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(d) *Party access.* A party in a pending appeal may examine and copy the party's own submissions as well as any information in the appeal file that is not exempt from disclosure under the FOIA. Party access to the appeal file in a pending appeal does not require a FOIA request or a protective order.

(e) *Counsel's access under a protective order.* On request, OHA will issue a protective order under which outside counsel for a non-government party in a pending appeal may be admitted, to examine and copy the appeal file (except for tax returns and privileged information). The protective order will set out the terms to which counsel must agree. The terms will restrict counsel's use of the protected information to the pending appeal and will prohibit any further disclosure. Violations of the terms of a protective order may result in sanctions to the party and referral of the attorney to bar disciplinary authorities. OHA's Web site contains detailed information on the protective order procedure.

(f) *Decisions.* OHA decisions are normally published without redactions on OHA's Web site. A decision may contain confidential business and financial information where that information is either decisionally-significant or otherwise necessary for a comprehensible decision. Where no protective order is in place, a party may request a redacted public decision by contacting OHA. Where a protective order is in place, the Judge will usually issue the unredacted decision under the protective order and then a redacted version for public release.

■ 11. Amend § 134.206 by removing the last sentence of paragraph (a)(1); by revising paragraph (b); and by adding new paragraph (e) to read as follows:

§ 134.206 The answer or response.

* * * * *

(b) *Appeal of an SBA determination.* (1) *Notice and order.* Upon the filing of an appeal petition, OHA will issue a notice and order informing all known parties of the appeal petition and the deadline for filing and serving any responses to the appeal. The SBA response is due 45 days after the date the appeal petition is filed, unless a rule governing the particular type of appeal provides a different deadline.

(2) *SBA response.* If SBA is the respondent, SBA need not admit or deny the allegations in the petition, but must set forth the relevant facts and the legal arguments in support of SBA's determination.

(3) *Administrative record.* If SBA is to file and serve an authenticated copy of the administrative record (or protest file), the notice and order will provide further instructions.

(4) *Claim of privilege.* If SBA asserts a claim of privilege over any portion of the administrative record, SBA must serve the petitioner a redacted version, accompanied by a "Vaughn Index" describing each withheld item and justifying each claim of privilege. SBA also must file an unredacted copy for *in camera* inspection by the Judge. The Judge will afford the petitioner an opportunity to object to the administrative record and to challenge any claim of privilege asserted by SBA.

* * * * *

(e) *Reply.* A reply to a response is not permitted unless the Judge, upon

motion or on his or her own initiative, orders a reply to be filed and served. A party moving for leave to reply should file and serve the proposed reply with its motion.

■ 12. Amend § 134.207 as follows:

■ a. In paragraph (a), revise the first sentence and add a new sentence at the end; and

■ b. In paragraph (b), revise the first sentence and add a new sentence at the end.

§ 134.207 Amendments and supplemental pleadings.

(a) * * * Upon motion (*see* § 134.211), and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of amendments to pleadings. * * * The Judge, on his or her own initiative, may order a party to file and serve an amendment to a pleading.

(b) * * * Upon motion (*see* § 134.211), and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading. * * * The Judge, on his or her own initiative, may order a party to file and serve a supplemental pleading.

* * * * *

■ 13. In § 134.209, add two sentences at the end, to read as follows:

§ 134.209 Requirement of signature.

* * * False statements are subject to criminal penalties. Any misconduct is subject to sanctions (*see* § 134.219).

■ 14. Amend § 134.211 as follows:

■ a. In paragraph (a), add a new sentence at the end;

■ b. Revise paragraph (c);

■ c. In paragraph (e), revise the second sentence and remove the third sentence; and

■ d. In paragraph (f), add the word "business" after the word "two".

§ 134.211 Motions.

(a) * * * A motion must be filed, served, and accompanied by a certificate of service (*see* § 134.204).

* * * * *

(c) *Response.* All non-moving parties must file and serve a response to the motion or be deemed to have consented to the relief sought. The response is due no later than 15 days after the motion is served, unless the Judge sets a different deadline. On motion, or on his or her own initiative, the Judge may permit a reply to a response and/or oral argument on the motion.

* * * * *

(e) * * * If an answer or response to the appeal petition has not yet been filed, the motion to dismiss stays the respondent's time to answer or respond.

(f) *Motion for an extension of time.* Except for good cause shown, a motion for an extension of time must be filed at least two business days before the original deadline.

■ 15. Revise § 134.212 to read as follows:

§ 134.212 Summary judgment.

(a) *On motion by a party.* At any time before the close of record, a party may move for summary judgment as to all or any portion of the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(1) *Contents of motion.* The motion must include a statement of the material facts believed to be undisputed and the party's legal arguments. The motion may include supporting statements in accordance with 28 U.S.C. 1746. The motion must be filed, served, and accompanied by a certificate of service (*see* § 134.204).

(2) *Response.* No later than 15 days after the service of a motion for summary judgment, all non-moving parties must file and serve a response to the motion or be deemed to have consented to the motion for summary judgment.

(3) *Cross-motions.* In its response to a motion for summary judgment, a party may cross-move for summary judgment. The initial moving party must file and serve a response to any cross-motion for summary judgment within 15 days after the service of that cross-motion or be deemed to have consented to the cross-motion for summary judgment.

(4) *Stay.* If an answer or response to the appeal petition has not yet been filed, the motion for summary judgment stays the respondent's time to answer or respond. If the Judge denies the motion and an answer or response has not yet been filed, the respondent must file the answer or response within 15 days after the order deciding the motion unless otherwise ordered by the Judge.

(b) *On the Judge's own initiative.* The Judge may issue an order granting summary judgment as to all or any portion of the case in absence of a motion if there is no genuine issue to any material fact, and a party is entitled to a decision in its favor as a matter of law.

(c) *Appeal of an SBA determination.* If the SBA determination being appealed was based on multiple grounds, SBA may move for summary judgment on one or more of those grounds. If the Judge finds, as to any ground, that there is no genuine issue of material fact and that the SBA is entitled to a decision in its favor as a matter of law, the Judge will grant the motion for summary judgment and dismiss the rest of the appeal.

§ 134.213 [Amended]

■ 16. In § 134.213, paragraph (c), add the words "(see § 134.205)" after the words "protective order".

■ 17. Amend § 134.214 by revising paragraphs (a) and (b) to read as follows:

§ 134.214 Subpoenas.

(a) *Availability.* At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring a witness to appear and testify, or to produce particular documents, at a specified time and place.

* * * * *

(d) *Motion to quash.* A motion to limit or quash a subpoena must be filed and served within 5 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be filed and served within 5 days after service of the motion, unless a shorter time is specified by the Judge.

■ 18. Amend § 134.216 as follows:

■ a. Designate the existing text as paragraph (a); and

■ b. Add new paragraphs (b) and (c).

§ 134.216 Alternative dispute resolution procedures.

* * * * *

(b) A Judge may offer alternative dispute resolution procedures to the parties at any time during the proceeding.

(c) The AA/OHA or a Judge may designate a Judge or attorney assigned to OHA to serve as a neutral in alternative dispute resolution procedures. If OHA provides the neutral and the mediation fails to resolve all issues in the case, the OHA-provided neutral will not be involved in the adjudication.

■ 19. Amend § 134.218 by revising the last sentence of paragraph (c), to read as follows:

§ 134.218 Judges.

* * * * *

(c) * * * A denial of a motion for recusal may be appealed within 5 days to the AA/OHA, or to the Administrative Law Judge if the AA/OHA is the Judge, but that appeal will not stay proceedings in the case.

■ 20. Revise § 134.219 to read as follows:

§ 134.219 Sanctions.

(a) A Judge may impose appropriate sanctions, except for fees, costs, or monetary penalties, which he or she deems necessary to serve the ends of justice, if a party or its attorney:

(1) Fails to comply with an order of the Judge;

(2) Fails to comply with the rules set forth in this part;

(3) Acts in bad faith or for purposes of delay or harassment;

(4) Submits false statements knowingly, recklessly, or with deliberate disregard for the truth; or

(5) Otherwise acts in an unethical or disruptive manner.

(b) Appropriate sanctions may include:

(1) Ordering a pleading or evidentiary filing to be struck from the record;

(2) Dismissing an appeal with prejudice;

(3) Suspending counsel from practice before OHA;

(4) Filing a complaint with the applicable State bar; and

(5) Taking any other action that is appropriate to further the administration of justice.

■ 21. Amend § 134.222 by removing paragraph (a)(3) and revising paragraph (d).

The revisions read as follows:

§ 134.222 Oral hearing.

* * * * *

(d) *Payment of subpoenaed witnesses.* A party who obtains a witness's presence at an oral hearing by subpoena must pay to that witness the fees and mileage costs to which the witness would be entitled in Federal court.

* * * * *

■ 22. Amend § 134.223 by adding a new sentence at the end of paragraph (b), to read as follows:

§ 134.223 Evidence.

* * * * *

(b) * * * Weight to be afforded hearsay evidence is at the discretion of the Judge.

§ 134.224 [Removed and Reserved]

■ 23. Remove and reserve § 134.224.

§ 134.225 [Amended]

■ 24. Amend § 134.225 by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

■ 25. Amend § 134.226 by revising paragraph (a), to read as follows:

§ 134.226 The decision.

(a) *Contents.* (1) Following close of record, the Judge will issue a decision containing findings of fact and conclusions of law, the reasons for such findings and conclusions, and any relief ordered. The record will constitute the exclusive basis for a decision.

(2) An OHA decision creates precedent, unless:

(i) Another regulation in this chapter applicable to a specific type of appeal provides that the OHA decision does not create precedent; or

(ii) the decision is designated as one not to be cited as precedent.

(3) A summary decision containing only cursory findings of fact and conclusions of law may be issued only if the Judge finds a full decision will not advance understanding of Federal statutes or applicable regulations, policies, or procedures and the underlying facts and law are of a routine and non-complex nature.

* * * * *

Subpart C—Rules of Practice for Appeals From Size Determinations and NAICS Code Designations

§ 134.302 [Amended]

■ 26. Amend § 134.302(b) by removing the words "Associate Administrator for Business Development" and by adding, in their place, the words "Director, Office of Business Development".

■ 27. Amend § 134.305 by revising paragraphs (a)(1), (b)(5), and (c), to read as follows:

§ 134.305 The appeal petition.

(a) * * *

(1) In a size appeal, a copy of the size determination being appealed;

* * * * *

(b) * * *

(5) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205–6873, or e-mail at *OPLService@sba.gov.*

(c) *Service of NAICS appeals.* The appellant must serve:

(1) The contracting officer who made the NAICS code designation; and

(2) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205–6873, or e-mail at *OPLService@sba.gov.*

* * * * *

§ 134.306 [Amended]

■ 28. In § 134.306, paragraph (b), after the words "send to OHA", add the words "an electronic link to or".

■ 29. Amend § 134.315 by revising the first sentence to read as follows:

§ 134.315 The record.

Where relevant, the provisions of § 134.225 apply. * * *

■ 30. Add § 134.318, to read as follows:

§ 134.318 NAICS appeals.

(a) The regulations at §§ 121.402, 121.1102, and 121.1103 of this chapter also apply to NAICS code appeals.

(b) *Effect of OHA's decision.* If OHA grants the appeal (changes the NAICS code), and the contracting officer receives OHA's decision by the date offers are due, the contracting officer must amend the solicitation to reflect the new NAICS code. If the contracting officer receives OHA's decision after the date offers are due, OHA's decision will not apply to the pending procurement, but will apply to future solicitations for the same supplies or services.

(c) *Summary dismissal.* OHA may summarily dismiss a NAICS appeal either on the Judge's own initiative or on motion by a party. A summary dismissal may be with or without prejudice, and may be issued before the date set for close of record. Grounds for summary dismissal include: premature appeal, withdrawn appeal, settlement, cancellation of the procurement, and contract award.

Subpart D—Rules of Practice for Appeals Under the 8(a) Program

■ 31. Revise § 134.403 to read as follows:

§ 134.403 Service of appeal petition.

Concurrent with its filing with OHA, the petitioner also must serve separate copies of the petition, including attachments, on two SBA officials.

(a) All 8(a) appeals must be served to: Director, Office of Business Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205–5206, or e-mail at *8aBD2@sba.gov.*

(b)(1) Appeals of early graduation or termination also must be served to: Associate General Counsel for Litigation, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205–7415, or e-mail at *OLITService@sba.gov.*

(2) Appeals of denial of program admission, suspension of program assistance, or denial of a request for waiver also must be served to: Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205–6873, or e-mail at *OPLService@sba.gov.*

■ 32. Revise § 134.404 to read as follows:

§ 134.404 Deadline for filing appeal petition.

An 8(a) appeal petition must be filed within 45 calendar days after receipt of the SBA determination being appealed.

§ 134.405 [Amended]

■ 33. In § 134.405, paragraph (a)(2), remove the words "under § 134.202".

■ 34. Amend § 134.406 by revising paragraphs (c) and (e) to read as follows:

§ 134.406 Review of the administrative record.

* * * * *

(c) *The administrative record.* (1) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker, and those SBA officials that recommended either for or against the decision, relied. The administrative record, however, need not contain all documents pertaining to the petitioner. For example, the administrative record in a termination proceeding need not include the Participant's entire business plan file, documents pertaining to specific 8(a) contracts, or the firm's application for participation in the 8(a) BD program if they are unrelated to the termination action. The SBA may claim privilege as to certain materials.

(2) The petitioner may object to the absence of a document, previously submitted to, or sent by, SBA, which the petitioner believes was erroneously omitted from the administrative record. The petitioner also may object to a claim of privilege made by the SBA. The petitioner's objections must be filed and served no later than 10 days of its receipt of the administrative record.

(3) In the absence of any objection by the petitioner or a finding by the Judge pursuant to paragraph (e) of this section that the record is insufficiently complete to decide whether the determination was arbitrary, capricious, or contrary to law, the administrative record submitted by SBA shall be deemed complete.

* * * * *

(e) *Remand.* (1) The Administrative Law Judge may remand a case to the Director, Office of Business Development (or, in the case of a denial of a request for waiver under § 124.515 of this chapter, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious, or contrary to law. In the event of such a remand, the Judge will not require the SBA to supplement the administrative record other than to supply the reason or reasons for the determination and any documents submitted to, or considered by, SBA in connection with any reconsideration permitted by regulation that occurs during the remand period. After such a remand, in the event the Judge finds that the reasons upon which the determination is based are absent from any supplemented record, the Judge will find the SBA determination to be arbitrary, capricious, or contrary to law.

(2) The Administrative Law Judge may also remand a case to the Director, Office of Business Development (or, in the case of a denial of a request for waiver under § 124.515 of this chapter, to the Administrator) for further consideration where it is clearly apparent from the record that SBA made an erroneous factual finding (*e.g.,* SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (*e.g.,* SBA applied the wrong regulatory provision in evaluating the case).

(3) The Administrative Law Judge may remand an eligibility, early graduation, or termination appeal to the Director, Office of Business Development, where the determination raises a new ground that was not in the initial SBA determination.

(4) A remand under this section will be for a reasonable period.

Subpart E—Rules of Practice for Appeals From Service-Disabled Veteran Owned Small Business Concern Protests

■ 35. Amend § 134.505 by revising paragraphs (a)(2), (a)(4), (b)(1), and (b)(4) to read as follows:

§ 134.505 What are the requirements for an appeal petition?

(a) * * *

(2) A statement that the petition is appealing an SDVO SBC protest determination issued by the D/GC, a copy of the protest determination being appealed, and the date the petitioner received the SDVO SBC protest determination;

* * * * *

(4) The name, address, telephone number, facsimile number, e-mail address, and signature of the appellant or its attorney.

(b) * * *

(1) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205–6390;

* * * * *

(4) Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205–6873, or e-mail at *OPLService@sba.gov*.

* * * * *

Subpart F—Implementation of the Equal Access to Justice Act

§ 134.601 [Amended]

■ 36. In § 134.601 remove "134.405(b)" and add in its place "134.605(b)".

§ 134.602 [Amended]

■ 37. In § 134.602, in the introductory text, remove "134.406" and add in its place "134.606"; and in paragraph (a), by remove "134.403" and add in its place "134.603".

§ 134.606 [Amended]

■ 38. In § 134.606, paragraph (a)(4), remove "134.407" and add in its place "134.607".

§ 134.611 [Amended]

■ 39. In § 134.611, paragraph (a)(7), remove "134.408" and add in its place "134.608".

■ 40. Add a new subpart H to read:

Subpart H—Rules of Practice for Employee Disputes

Sec.

134.801 Scope of rules.
134.802 [Reserved]
134.803 Commencement of appeals from AMO decisions.
134.804 The appeal petition.
134.805 After the appeal petition is filed.
134.806 Mediation.
134.807 SBA response.
134.808 The decision.
134.809 Review of initial decision.

§ 134.801 Scope of rules.

(a) The rules of practice in this subpart H apply to the OHA appeal under the Employee Dispute Resolution Process (EDRP). Standard Operating Procedure (SOP) 37 71 sets out the EDRP. It is available at *http://www.sba.gov/tools/resourcelibrary/sops/index.html* or through OHA's Web site *http://www.sba.gov/oha*).

(b) The following rules, located in subparts A and B of this part, also apply to OHA appeals under the EDRP:

(1) Definitions (§ 134.101);

(2) Jurisdiction of OHA (§ 134.102(r) only);

(3) Scope of the rules in this subpart B (§ 134.201(a), (b)(6), and (c) only);

(4) Commencement of cases (§ 134.202(d) only, on deadlines and how to count days);
(5) Filing and service requirements (§ 134.204);
(6) Amendments and supplemental pleadings (§ 134.207);
(7) Requirement of signature (§ 134.209);
(8) Motions (§ 134.211);
(9) Summary decision (§ 134.212);
(10) Sanctions (§ 134.219); and
(11) Review of initial decisions (§ 134.228).

§ 134.802 [Reserved]

§ 134.803 Commencement of appeals from AMO decisions.

(a) An appeal from an AMO decision must be commenced by filing an appeal petition within 15 days from the date the Employee receives the AMO's decision.
(b) If the AMO does not issue a decision, the appeal petition must be filed no sooner than 16 days and no later than 55 days from the date on which the Employee filed the original Statement of Dispute with the AMO.
(c) The rule for counting days is in § 134.202(d).
(d) OHA will dismiss an untimely appeal.

§ 134.804 The appeal petition.

(a) *Form.* There is no required format for an appeal petition. However, it must include the following:
(1) A copy of the original Statement of Dispute;
(2) A copy of the AMO's decision or other response, if any;
(3) Statement of why the AMO's decision is alleged to be in error;
(4) Any other pertinent information the OHA Judge should consider;
(5) A request for mediation, if applicable;
(6) The Employee's name, home mailing address, daytime telephone and facsimile numbers, e-mail address, and signature; and
(7) If represented by an attorney, the attorney's contact information and signature.
(b) *Service of the appeal petition upon the SBA.* The Employee must serve copies of the entire appeal petition upon three SBA officials:
(1) The AMO;
(2) Chief Human Capital Officer, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; and
(3) Associate General Counsel for General Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, e-mail: *OGLService@sba.gov,* except that an employee of the Office of Inspector General (OIG) must serve it upon the Counsel to the Inspector General, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, e-mail: *ig.counseldiv@sba.gov*.
(c) *Certificate of Service.* The Employee will attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).
(d) The rules governing filing and service are in § 134.204.
(e) *Dismissal.* An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge at his or her own initiative or upon motion of the SBA.

§ 134.805 After the appeal petition is filed.

(a) The AA/OHA will assign a Judge to adjudicate the case. If mediation is requested or offered, the AA/OHA will assign a different person to mediate the case.
(b) OHA will issue and serve upon the Employee and the SBA a notice and order informing the parties that an appeal has been filed, and setting the date for SBA's response and the close of record.
(c) The rules for amendments to pleadings and supplemental pleadings are in § 134.207.
(d) Unless otherwise instructed, OHA will serve all orders and the decision by U.S. Mail upon the Employee at his or her home address, or upon the attorney if represented by an attorney.

§ 134.806 Mediation.

Either the Employee or the SBA may request mediation, or OHA may offer mediation. OHA may designate a Judge or an OHA attorney to serve as a mediator. If the parties reach a settlement through mediation, they may file a joint motion to dismiss the appeal based on that settlement. If the parties do not reach a settlement, the mediation will conclude and the appeal will go to adjudication. An OHA-provided mediator will not be involved in a subsequent adjudication.

§ 134.807 SBA response.

(a) If the appeal goes to adjudication, SBA will file and serve the SBA's response to the appeal and a copy of the Dispute File.
(b) Unless the Judge orders a different date (either on his or her own initiative or on motion by a party), the SBA must file any response to the appeal petition no later than 15 days from the conclusion of mediation or 45 days from the filing of the appeal petition, whichever is later.
(c) The SBA's response and the Dispute File are normally the last submissions in an appeal, although the Judge may order or permit additional submissions. If a party wishes to file an additional submission, the party must file and serve a motion (see § 134.211) accompanied by the proposed submission.

§ 134.808 The decision.

(a) The Judge will decide the appeal within 45 calendar days (if practicable) from close of record. The decision will affirm, modify, remand, or reverse the AMO's decision.
(b) The standard of review and burden of proof will be determined by the specific issue presented.
(c) OHA's decision is an initial decision which becomes the final decision of the SBA 30 calendar days after issuance, unless a party files a request for review pursuant to § 134.809.
(d) OHA's decision is not precedential and it will not be published.

§ 134.809 Review of initial decision.

The Request for Review (RFR) process is the same as in § 134.228 except that, for OIG employees:
(a) The RFR must be served on the Counsel to the Inspector General rather than on the Associate General Counsel for General Law; and
(b) The deciding official is the Inspector General (or designee) rather than the Administrator.

Dated: July 30, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–19401 Filed 8–5–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201 and 202

[Release No. 34–62575]

Amendments to the Informal and Other Procedures, Rules of Organization and Program Management, and Rules of Practice; Interim Commission Review of Public Company Accounting Oversight Board Inspection Reports and Regulation P

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its Informal and Other Procedures to add a rule to facilitate interim Commission review of Public Company Accounting Oversight Board

("PCAOB") inspection reports under Section 104(h) of the Sarbanes-Oxley Act of 2002 (the "Act"), and its Rules of Organization and Program Management and Rules of Practice to delegate authority to the Chief Accountant related to these reviews. The Commission is also establishing a subpart in its Informal and Other Procedures—Regulation P—to include procedural rules relating to the PCAOB.

DATES: *Effective Date:* September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Jeffrey Cohan (Senior Special Counsel) or John Offenbacher (Professional Accounting Fellow) at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7561.

SUPPLEMENTARY INFORMATION: The Commission is amending: (1) Its Informal and Other Procedures [1] to establish a new subpart ("Regulation P"),[2] to establish a set of procedures to facilitate requests by registered public accounting firms for interim Commission review of PCAOB inspection reports (§ 202.140), and to redesignate existing Rule 12 (§ 202.11) as Rule 190 (§ 202.190); (2) its Rules of Organization and Program Management [3] to provide delegations of authority to the Chief Accountant related to these reviews (§ 200.30–11); and (3) its Rules of Practice [4] to reflect the new delegations of authority (§ 201.430 and § 201.431).

I. Discussion of Rule Amendments

A. Introduction

The Act established the PCAOB to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. The PCAOB operates under the comprehensive oversight and enforcement authority of the Commission.[5]

Consistent with that oversight, Section 104(h) of the Act provides for the opportunity of a registered public accounting firm to request interim Commission review with respect to PCAOB inspection reports. The Commission is adopting new rules to implement the Act's provisions relating to these interim review requests.

B. Background

Section 104 of the Act requires the PCAOB to conduct a continuing program of inspections of each registered public accounting firm.[6] That section of the Act directs the PCAOB to publish a written report of its findings for each inspection.[7]

As required by the Act, PCAOB rules provide that a registered public accounting firm may review and respond to a draft inspection report.[8] However, when the PCAOB first publishes its report, no portions of the inspection report that deal with criticisms of, or potential defects in, the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the PCAOB, not later than 12 months after the date of the inspection report.[9]

Section 104 of the Act also provides that a registered public accounting firm may seek interim review by the Commission, pursuant to such rules as the Commission may promulgate, if the firm either:

(1) Has responded to the substance of particular items in the PCAOB's draft inspection report and disagrees with the assessments contained in any final report prepared by the PCAOB following that response, or

(2) Disagrees with the PCAOB's determination that quality control criticisms or defects identified in the inspection report have not been addressed to the satisfaction of the PCAOB within 12 months of the date of the inspection report.[10]

The Act further provides that a firm may request any such review within 30 days of the event that gives rise to the review.[11] We believe implicit in the language of 104(h)(1) is that the firm may seek review both with respect to items to which the firm responded to the PCAOB in connection with a draft inspection report and disagrees with the assessments relating to those items contained in any final report, as well as any assessments contained in any final inspection report that was not contained in the draft inspection report provided to the firm with which the firm disagrees (*e.g.,* items on which the firm did not have an opportunity to comment in connection with the draft report). New Rule 140, which we are adopting today, clarifies that these are separate reviewable matters.

To implement Section 104 of the Act as to the PCAOB's basic inspection program, the Commission approved a set of rules proposed by the PCAOB.[12] These rules provide that the PCAOB will make a draft inspection report available for review by the firm that is the subject of the report, and the firm may submit a written response to the draft report, which will become part of the inspection report.[13] A separate PCAOB rule implements the Act's 12-month delay of publication of any portions of an inspection report that deal with criticisms of, or defects in, the inspected firm's quality control systems.[14] During that 12-month period, the firm that is the subject of the report may submit evidence or otherwise demonstrate to the PCAOB that it has improved its quality control systems and remedied the defects in question. If the PCAOB determines that the firm has addressed the quality control defects and criticisms in the final report satisfactorily, the portion of the report that dealt with those defects and criticisms will not be made public.[15]

On the other hand, if the inspected firm has failed to address those defects and criticisms to the satisfaction of the PCAOB within the 12-month period mandated by Sections 104(g) and (h) of the Act, the PCAOB will take one of the following actions:

(1) If the inspected firm failed to make any submission to the PCAOB concerning the firm's efforts to address the quality control defects or criticisms, the PCAOB will make those portions of the report public upon expiration of the 12-month period;

(2) If the firm made a submission to the PCAOB concerning the firm's efforts to address the quality control defects or criticisms, but did not seek timely interim Commission review of an adverse PCAOB determination concerning those defects or criticisms,

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[1] 17 CFR 202 *et seq.*

[2] 17 CFR 202 subpart 100.

[3] 17 CFR 200 *et seq.*

[4] 17 CFR 201 *et seq.*

[5] The Act vests the Commission with oversight duties and responsibilities, including the duties to appoint the members of the PCAOB, approve PCAOB rules and professional standards for them to take effect, act as an appellate authority for PCAOB enforcement actions, and approve the PCAOB's budget and annual accounting support fee. The Commission also, among other things, may amend existing PCAOB rules, assign additional tasks to the PCAOB as appropriate, oversee the PCAOB's exercise of certain assigned powers and duties, and limit the PCAOB's activities and remove PCAOB members. *See,* e.g., Title I of the Act [15 U.S.C. 7211–7219].

[6] *See* Section 104(a) of the Act.

[7] *See* Section 104(g) of the Act.

[8] *See* Section 104(f) of the Act and PCAOB Rule 4007.

[9] *See* Section 104(g)(2) of the Act.

[10] *See* Section 104(h)(1) of the Act.

[11] *See* Section 104(h)(3) of the Act.

[12] *See* PCAOB Rules 4000–4010, PCAOB Release No. 2003–19 (October 7, 2003). The rules were approved by the Commission in Release No. 34–49787 (June 1, 2004).

[13] *See* PCAOB Rule 4007. *See also* Section 104(f) of the Act.

[14] *See* PCAOB Rule 4009.

[15] *See* Section 104(g)(2) of the Act.

the PCAOB will make public those portions of the report that deal with criticisms of or potential defects in quality control systems that the firm has not addressed to the satisfaction of the Board upon expiration of a 30-day period during which the firm may seek Commission review; or

(3) If the inspected firm made a timely request for interim Commission review, the PCAOB will make public those portions of the report that deal with criticisms of or potential defects in quality control systems that the firm has not addressed to the satisfaction of the Board 30 days after the firm formally requested interim Commission review, unless the Commission, by rule or order, directs otherwise.[16]

C. Rule Amendments

We are adopting new Rule 140 to provide procedures for firms to follow in requesting interim Commission review with respect to a PCAOB inspection report, including examples of the types of information that would facilitate the Commission's review. Consistent with the time periods in the Act, the rule specifies that a request for interim Commission review must be submitted to the Commission's Office of the Secretary, with a copy to the PCAOB, within 30 days following either the date the firm is provided a copy of the final inspection report (with respect to a review sought pursuant to Section 104(h)(1)(A) of the Act), or the date the firm receives notice of the PCAOB's adverse determination with respect to remediation of quality control defects or criticisms (with respect to a review sought pursuant to Section 104(h)(1)(B) of the Act).[17]

The review request should be marked "Request for Interim Commission Review with Respect to PCAOB Inspection Report." Firms seeking interim Commission review should submit, along with the review request, information that, to the extent possible, is focused on the specific matters for which review is requested, and that clearly and succinctly addresses the issues raised by the PCAOB. Generally, we expect that this information would include, but may not necessarily be limited to:

- The particular inspection report that is the subject of the request,
- The specific assessments or determinations that are the subject of the request,
- The alleged errors or deficiencies in the assessments or determinations and the reasons they are believed to be in error or deficient,
- If the action relates to an adverse determination by the PCAOB with respect to remediation of quality control defects or criticisms, any actions the firm took to address criticisms or defects identified in the inspection report,[18] and
- Any supporting documentation relevant to the review including, but not limited to, any documents previously submitted to the PCAOB that the firm wishes the Commission to consider.

The rule directs the firm to provide a copy of its review request to the PCAOB simultaneously with its submission to the Commission. This is consistent with directions throughout the new rule for the firm and the PCAOB to provide copies of the information they submit to the Commission to the other party simultaneous with their submission to the Commission to provide an opportunity for both parties to be informed of each other's respective positions.

With respect to interim reviews contemplated by Section 104(h)(1)(A) of the Act, PCAOB Rule 4008 is silent regarding whether a final inspection report would be made public before an inspected firm has an opportunity to review the final inspection report and determine whether to request interim Commission review. In order to prevent the release of any final report before the inspected firm has an opportunity to seek Commission review, the new rule provides that the PCAOB shall not make a final inspection report publicly available until the firm that is the subject of the report has had 30 calendar days in which to seek interim Commission review, unless the firm consents in writing to earlier publication of the report. As noted above, this is consistent with the provision in PCAOB Rule 4009 that delays publication of unresolved quality control defects or criticisms for 30 calendar days in certain circumstances. New Rule 140 also provides for a similar delay of publication with respect to the possibility of a review request pursuant to Section 104(h)(1)(B) of the Act.

We do not believe that matters potentially subject to interim Commission review should be subject to publication, absent consent by the firm, before the firm's time to seek that review has expired, and we see no sufficient reason to vary this result based on whether review would be pursuant to Section 104(h)(1)(A) of the Act or Section 104(h)(1)(B) of the Act.[19] We understand this procedure may require the PCAOB to adjust its processes to account for the 30-day period for a firm to request review before initial publication of the final inspection report. However, given the standard of review articulated below with respect to the Commission's processing of such reviews, as well as the fact that the Commission may decline to grant review requests, we do not believe providing for an initial stay of the publication of a final inspection report will result in needless delays or routine appeals simply to delay publication.

New Rule 140 also provides that a timely review request by a firm will operate as an automatic stay of publication of the portions of the final inspection report that are the subject of the firm's review request (with respect to requests pursuant to Section 104(h)(1)(A) of the Act) or the portions of the inspection report that deal with criticism of or potential defects in the quality control systems of the firm that are the subject of the firm's review request (with respect to requests pursuant to Section 104(h)(1)(B) of the Act) unless the Commission determines otherwise, in its own discretion.

At the end of the 30-day review request period, the PCAOB shall make publicly available any portions of the final inspection report that are not the subject of the firm's review request (with respect to Section 104(h)(1)(A) of the Act) or criticisms of or potential defects in the quality control systems of the firm that are not the subject of the firm's review request (with respect to Section 104(h)(1)(B) of the Act), unless the Commission otherwise determines that such a result would not be necessary or appropriate. This helps to ensure timely publication of the portions of the report that are not

[16] *See* PCAOB Rule 4009(d).

[17] Time periods for purposes of Rule 140 shall be computed as provided in Rule 160 of the Commission's Rules of Practice. 17 CFR 201.160.

[18] A request with respect to Section 104(h)(1)(B) is limited to situations where the firm disagrees with a Board determination that criticisms or defects indentified in a previously issued inspection report have not been satisfactorily addressed. It is not an additional opportunity to seek review with respect to the original criticisms or defects themselves. If a firm disagrees with an original criticism or defect and wishes to request Commission review, the firm should initiate that request in accordance with Section 104(h)(1)(A) within 30 days of when the firm is originally provided a copy of the final inspection report.

[19] In particular, we believe this approach is consistent with Section 104(h) that an opportunity for interim Commission review is meant to precede publication. Further, we believe this approach is consistent with Section 104(g) of the Act, which provides that the final inspection report will be made available to the public "subject to" the Section 104(h) review process, which itself is a logical extension of the statutory requirement for the PCAOB to provide for a procedure for review before publication in accordance with Section 104(f) of the Act.

subject to review. Further, if the firm fails to make a timely review request, the PCAOB shall make publicly available the final inspection report (with respect to Section 104(h)(1)(A) of the Act) or the portions of the inspection report that deal with criticism of or potential defects in the quality control systems of the firm (with respect to Section 104(h)(1)(B) of the Act).

If a timely request for interim review with respect to an inspection report is made, the Commission will notify the firm and the PCAOB within 30 calendar days of the receipt of the request as to whether the Commission in its discretion will grant the request for interim review. We believe this provides an appropriate period of time to evaluate the initial review request while balancing the interest in timely publication of inspection determinations. In considering whether to grant a review request, among the factors that the Commission may consider are whether the review request makes a reasonable showing that review is appropriate or otherwise presents a concern. We do not intend to routinely grant review requests absent some indication of concern.

If the Commission does not grant the review request, the stay of publication is terminated upon notification to the firm and the PCAOB. If the Commission notifies the firm and the PCAOB that the request for interim review has been granted, the stay of publication shall continue unless the Commission determines otherwise in its own discretion, or unless the firm consents in writing to the PCAOB, with a copy to the Commission to earlier publication.

Rule 140 provides that where the Commission has notified the firm and the PCAOB that it is granting the request for an interim review, the PCAOB may submit responsive information or documents with the Commission, with a copy to the firm, within 15 calendar days of receipt of such notice. We believe this period of time should be reasonable given that the PCAOB drafted the final inspection report and considered the evidence for its decision.

The Commission also may request additional information, and provide a period of up to seven calendar days to respond to such request, from the firm in question, the PCAOB, and any associated person of the firm. The Commission may grant the firm or the PCAOB a period of up to seven calendar days to respond to any information obtained. This period of time is selected to balance the interest for an opportunity to respond with the expediency needed to complete the review and, if applicable, have the underlying findings or determinations published. Likewise, if the firm or the PCAOB fails to respond timely to a request from the Commission, such failure may make it impossible for the Commission to complete its review and therefore could result in a determination adverse to the non-responsive party.[20]

The information provided by the firm, together with any additional information provided by the PCAOB or associated persons, provides a basis for Commission consideration of the review. Rule 140 provides that, based on this information, the Commission shall consider whether the PCAOB's assessments or determinations are arbitrary and capricious, or otherwise not consistent with the purposes of the Act.

Congress did not prescribe a standard of review for PCAOB inspection reports in the Act. Therefore, in establishing this standard of review, the Commission is informed by the approach that the courts have generally taken in reviewing agency action in the absence of a statutorily prescribed standard of review.[21] Further, an arbitrary and capricious standard of review creates an incentive for the firm to fully address and pursue areas of concern in the inspection report with the PCAOB, under its rules, prior to requesting review by the Commission.

At the end of its review, the Commission shall inform the firm seeking review and the PCAOB in writing that the Commission:

(1) Does not object to all or part of the PCAOB's assessments or determination and the stay of publication is terminated; or

(2) Remands to the PCAOB with instructions that the stay of publication is permanent or that the PCAOB take such other actions as the Commission deems necessary or appropriate with respect to publication, including, but not limited to, revising the final inspection report or determinations before publication.

To further encourage expediency in the review process, the rule provides that the review is to be completed and written notice provided to the firm and the PCAOB no more than 75 calendar days after notification to the firm and the PCAOB that the Commission is granting the request for an interim review, unless the Commission extends the period of review for good cause. The default 75-day period allows for the maximum 15-day period in the rule for the PCAOB to respond, an opportunity for the Commission to determine if additional information is needed, the ability, if appropriate, to have at least one request for additional information and an opportunity for the other party to respond (up to seven days under the rule each), and an opportunity for the Commission to review and complete the request.

Consistent with the purpose of providing an opportunity for review before public disclosure of all or a portion of an inspection report by the PCAOB, Rule 140 provides that, unless otherwise determined by the Commission, the decision to grant or deny a review request and the results of the Commission's review shall be non-public, and the information or documents submitted, created, or obtained by the Commission or its staff in the course of the review shall be deemed non-public.[22] Further Section 104(h)(2) provides that any decision of the Commission with respect to interim review under Section 104(h) is not subject to judicial review.[23] Finally, again consistent with the limited purposes of review under Section 104(h), any action taken by the Commission relates solely to the publication of the relevant inspection report and does not imply that the firm is exonerated or that no action may ultimately result from the inspection or from an investigation by the Commission, the PCAOB, or any other party.

D. Regulation P

The Commission is establishing a separate subpart in the Commission's Informal and Other Procedures—Regulation P—to include procedural rules relating to the PCAOB in one central location. The intention is to designate Rules in Regulation P according to the Section of the Act to which they primarily relate. As such, the procedural rule regarding interim

[20] Such failure on the part of the firm would include the failure of an "associated person" of a firm to respond.

[21] *See Alaska Department of Environmental Conservation* v. *Environmental Protection Agency,* 540 U.S. 461, 496 (2004); *see also* 5 U.S.C. 706(2)(A) (Administrative Procedure Act). Also, we note that this is the standard that the courts have utilized in reviewing Commission actions. *See, e.g., Natural Resources Defense Council, Inc., et al.* v. *SEC, et al.,* 606 F.2d 1031, 1049 (DC Cir. 1979); *Bradford Nat'l Clearing Corp. et al.* v. *SEC,* 590 F.2d 1085, 1093 (DC Cir. 1978).

[22] *See also* Section 105(b)(5) of the Act. Rule 140 also provides that nothing shall be construed to impair or limit the ability of any party to request confidential treatment under the Freedom of Information Act [15 U.S.C. 7215(b)(5)], or any other applicable law. Applicants may wish to consider whether seeking confidential treatment would be appropriate.

[23] 15 U.S.C. 7214(h)(2).

inspection report reviews, which relates primarily to Section 104 of the Act, is being designated as Rule 140. In addition, the Commission is redesignating its existing procedural rule relating to the PCAOB budget process from Rule 11 to Rule 190 given the process relates primarily to Section 109 of the Act.

E. Delegation of Authority

In connection with adopting Rule 140, the Commission also is adopting Rule 30–11 of our Rules of Organization and Program Management to delegate authority to the Commission's Chief Accountant to process interim reviews subject to Rule 140. Among other matters, the Chief Accountant is delegated authority to grant or deny requests for interim review, to extend the time periods for the PCAOB or the firm to respond under the rule, to request additional information in conjunction with the review, to make a determination with respect to the review, and to notify the PCAOB and the firm of the results of the review. This delegation of authority is intended to conserve Commission resources by permitting the Chief Accountant to fulfill the Commission's review requirements in a timely manner. Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate.[24] Further, we expect that the Commission staff will process interim Commission reviews with respect to inspection reports as efficiently and expeditiously as possible to avoid any unnecessary delay in making the inspection report available to the public, as required by the Act.

II. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act ("APA"),[25] that this revision relates solely to agency organization, procedure, or practice. It is, therefore, not subject to the provisions of the APA requiring notice and opportunity for public comment.[26] The Regulatory Flexibility Act,[27] therefore, does not apply. Similarly, because these rules relate to "agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties," analysis of major status under the Small Business Regulatory Enforcement Fairness Act is not required.[28] The rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[29]

The Commission intends, after the Commission's initial experience under the new procedures, to issue a notice of comment in the future so the Commission can consider any such comments, along with the Commission's initial experience, in order to determine whether changes in pursuit of enhancements or efficiencies would be warranted.

III. Consideration of the Costs and Benefits of the Rule Amendments

We are sensitive to the costs and benefits imposed by our rules and amendments, and we have identified certain costs and benefits of these rules.

The potential benefits of the rule amendments include clarification and increased transparency of the Commission's review and oversight procedures with respect to the PCAOB [30] and the interim review procedures set forth in Rule 140, and the benefits of process: Notice, opportunity to be heard, efficiency, and fairness. Rule 140 establishes a set of procedures for registered public accounting firms to follow in requesting interim Commission review with respect to a PCAOB inspection report, as required by the Act. The rule benefits inspected firms by informing them of the procedures to follow in initiating the review process and obtaining Commission review with respect to inspection findings and determinations with which they disagree. Commission review with respect to the PCAOB's inspection reports would allow the Commission to protect the public interest in the quality of PCAOB reports. It could provide a further incentive for the PCAOB to exercise diligence in its inspection and remedial determination process, including encouraging the PCAOB to make determinations on the basis of reasoned support and sound analysis. The review procedure also benefits inspected firms by protecting against publication of inspection findings that the Commission ultimately may remand to the PCAOB for reconsideration.

There also are potential costs of the rule. Firms involved in Commission review proceedings may incur additional costs beyond those already incurred in complying with PCAOB procedures for seeking review of the inspection report's findings at the PCAOB level. However, a request for interim review of a PCAOB inspection report by the Commission is optional. Thus, a registered public accounting firm would incur these costs only if it expected the benefits from the review process to justify the costs.

The PCAOB also may incur additional costs as a result of the rule amendments, for example by adjusting its inspection process in anticipation of review requests and providing information to the Commission, especially at the Commission's request. The imposition of additional costs, beyond those already incurred by the PCAOB, could lead to higher accounting support fees assessed against issuers to cover the PCAOB's recoverable budget expenditure. To the extent the PCAOB has been publishing inspection reports before it has been feasible for firms to request interim review of findings, the public may experience a delay in publication from existing practice. However, to the extent those reports have included findings that would be remanded under Rule 140, providing an opportunity for those findings to be corrected may increase public confidence in the findings, including that the findings would not be further subject to change upon publication.

IV. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact on competition of any rule we adopt. The rule amendments are intended to provide additional guidance with respect to the Commission's oversight responsibilities under Sections 104 and 107 of the Sarbanes-Oxley Act. The rule amendments provide procedures for requesting Commission review with respect to inspection reports issued by the PCAOB.

Section 3(f) of the Securities Exchange Act of 1934 [31] requires us, when engaging in rulemaking that requires us to consider or determine whether an

[24] The Commission may also review any action taken by delegated authority. *See* Section 4A(b) of the Exchange Act. The Commission is revising its Rules of Practice to reflect this new delegation of authority to the Chief Accountant. Consistent with Section 104(h)(2), the Commission is also revising its Rules of Practice to provide that actions taken by delegated authority with respect to Rule 140 are not subject to judicial review.

[25] 5 U.S.C. 553(b)(3)(A).

[26] In addition, we intend to apply these procedures to pending applications, without further delay.

[27] 5 U.S.C. 601 *et seq.*

[28] 5 U.S.C. 804(3)(C).

[29] 44 U.S.C. 3501 *et seq.*

[30] In addition, organizing Commission procedural rules relating to the PCAOB in one subpart also will make locating such rules easier.

[31] 15 U.S.C. 78c(f).

action is necessary or in the public interest, to consider, in addition to the protection of investors, whether the action will promote competition and capital formation. We are not aware of any effect the rule amendments will have on competition, and capital formation. They are designed to enhance the transparency of the Commission's and the PCAOB's administrative practices, by facilitating the public's understanding of the Commission's oversight responsibilities with respect to PCAOB, and by promoting public confidence in the PCAOB's auditor oversight functions. The amendments may increase the efficiency of the PCAOB inspection process. Rule 140, which sets forth the administrative procedures relating to the Commission's review with respect to PCAOB inspection reports, applies to all registered public accounting firms that seek administrative review by the Commission. Therefore, the Commission does not expect the rules to have an anti-competitive effect.

V. Statutory Basis and Text of Rules

The Commission is amending its Informal and Other Procedures under the authority set forth in Sections 3, 101(c)(5), 104, and 107 of the Act; and Sections 4A and 23 of the Exchange Act. The amendments to the Commission's Rules of Organization and Program Management and Rules of Practice are adopted pursuant to the authorities set forth therein.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 201

Administrative practice and procedure.

17 CFR Part 202

Administrative practice and procedure, Securities.

Text of Amendments

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The general authority citation for part 200 is revised to read as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, and 7201 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Add § 200.30–11 to read as follows:

§ 200.30–11 Delegation of authority to the Chief Accountant.

Pursuant to the provisions of Pub. L. 101–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Chief Accountant of the Commission, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) In connection with Commission review of inspection reports of the Public Company Accounting Oversight Board ("PCAOB") under 15 U.S.C. 7214(h) and § 202.140:

(1) To grant or deny review requests and notify the firm and the PCAOB as to whether the Commission will grant the review request under § 202.140(d);

(2) To extend the time periods set forth in § 202.140(e) within which the PCAOB, registered public accounting firm or an associated person may submit responsive information and documents in connection with a request for Commission review.

(3) To request additional information pursuant to § 202.140(e) relating to the PCAOB's assessments or determination under review from the PCAOB, the registered public accounting firm, or any associated person of the firm during the course of an interim review of an inspection report, and to grant the PCAOB, the firm or any associated person a period of up to seven calendar days to respond to any information obtained.

(4) To consider requests for review of inspection reports and, based on such review, to not object to all or part of the assessments or determination of the PCAOB and terminate the stay of publication, or to remand to the PCAOB with instructions that the stay of publication is permanent or that the PCAOB take such other actions as he or she deems necessary or appropriate with respect to publication, including, but not limited to, revising the final inspection report or determinations before publication, and to provide the written notice communicating the same to the PCAOB and the registered public accounting firm, consistent with § 202.140.

(5) To determine that a timely review request by a firm will not operate as a stay of publication of those portions of the final inspection report or determinations described in § 202.140(b) that are the subject of the firm's review request pursuant to § 202.140(c)(5), as well as to determine that publication of the remainder of the final inspection report or criticisms or defects in the quality control systems would not be necessary or appropriate pursuant to § 202.140(c)(5).

(6) To, in the event the Commission does grant a review request pursuant to § 202.140, determine that the stay of publication shall not continue pursuant to § 202.140(d).

(7) To, in the event that the review pursuant to § 202.140(e) has not been completed and a written notice has not been sent 75 calendar days after notification to the firm and the PCAOB that it is granting the request for an interim review, grant an extension of time under the authority set forth in § 202.140(e).

(b) Notwithstanding anything in the foregoing, in any case in which the Chief Accountant believes it appropriate, he or she may submit the matter to the Commission.

PART 201—RULES OF PRACTICE

■ 3. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 78x, 79t, 80a–37 and 80b–11; 5 U.S.C. 504(c)(1).

* * * * *

■ 4. Section 201.430 is amended by adding a sentence to the end of paragraph (c) to read as follows:

§ 201.430 Appeal of actions made pursuant to delegated authority.

* * * * *

(c) * * * Pursuant to 15 U.S.C. 7214(h)(2), any decision by the Commission pursuant to 200.30–11 shall not be reviewable under 15 U.S.C. 78y and shall not be deemed 'final agency action' for purposes of 5 U.S.C. 704.

PART 202—INFORMAL AND OTHER PROCEDURES

■ 5. The general authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, and 7201 *et seq.,* unless otherwise noted.

* * * * *

■ 6. Add subpart A to part 202 after § 202.12 to read as follows:

Subpart A—Public Company Accounting Oversight Board (Regulation P)

§ 202.140 Interim Commission review of PCAOB inspection reports.

(a) *Definitions.*

(1) *Board* or *PCAOB* means the Public Company Accounting Oversight Board.

(2) *Registered public accounting firm* or *Firm* shall have the meaning set forth in 15 U.S.C. 7201(a)(12).

(3) *Associated person* means a person associated with the registered public accounting firm as defined in 15 U.S.C. 7201(a)(9).

(b) *Reviewable matters.* A registered public accounting firm may request interim Commission review of an assessment or determination by the PCAOB contained in an inspection report prepared under 15 U.S.C. 7214 and relating to that firm, if the firm:

(1) Has provided the PCAOB with a response, pursuant to the rules of the PCAOB, to the substance of particular items in a draft inspection report and disagrees with the assessments relating to those items contained in any final inspection report prepared by the PCAOB following such response;

(2) Disagrees with an assessment contained in any final inspection report that was not contained in the draft inspection report provided to the firm under 15 U.S.C. 7214(f) or the rules of the PCAOB; or

(3) Disagrees with the determination of the PCAOB that criticisms or defects in the quality control systems of the firm that were identified in an inspection report, but not disclosed to the public, have not been addressed to the satisfaction of the PCAOB within 12 months after the date of that inspection report.

(c) *Procedures for requesting interim Commission review.*

(1) A request for interim Commission review with respect to matters described in paragraph (b) of this section must be submitted to the Commission's Office of the Secretary within 30 calendar days of the following:

(i) The date the firm is provided a copy of the final inspection report described in paragraph (b)(1) or (b)(2) of this section; or

(ii) The date the firm receives notice of the PCAOB's determination described in paragraph (b)(3) of this section.

(2) The PCAOB shall not make publicly available the final inspection report or criticisms or defects in the quality control systems of the firm subject to a determination described in paragraph (b) of this section, as applicable, during the 30-day period during which the firm may request interim Commission review, unless the firm consents in writing to earlier publication of the report.

(3) A request for interim Commission review ("request" or "submission") must be marked "Request for Interim Commission Review With Respect to PCAOB Inspection Report." The request must focus on the specific matters for which relief is requested and succinctly address the issues raised by the PCAOB. The request, to the extent possible, should include, for example:

(i) A copy of the particular inspection report that is the subject of the request;

(ii) The specific assessments or determinations that are the subject of the request;

(iii) The alleged errors or deficiencies in the PCAOB's assessments or determination and the reasons for the firm's position;

(iv) If the matter is being reviewed under paragraph (b)(3) of this section, any actions taken by the registered public accounting firm to address criticisms or defects identified in the inspection report; and

(v) Any supporting documentation relevant to the review.

(4) The firm must provide a copy of its review request to the PCAOB simultaneously with its submission to the Commission.

(5) A timely review request by a firm will operate as a stay of publication of those portions of the final inspection report or criticisms or defects in the quality control systems of the firm subject to a determination described in paragraph (b) of this section, as applicable, that are the subject of the firm's review request, unless the Commission otherwise determines in its own discretion. Upon expiration of the 30-day period during which the firm may request interim Commission review, the PCAOB shall make publicly available the remainder of the final inspection report or criticisms or defects in the quality control systems of the firm that were indentified in an inspection report, as applicable, that are not the subject of the firm's review request, unless the Commission otherwise determines that such a result would not be necessary or appropriate.

(6) If the firm fails to make a timely review request, pursuant to Section 104(g)(2) of the Act, the PCAOB shall make publicly available the final inspection report or criticisms or defects in the quality control systems of the firm that were indentified in an inspection report, as applicable.

(d) *Procedures for granting or denying the review request.* Within 30 calendar days of a timely review request, the Commission will notify the firm and the PCAOB as to whether the Commission will exercise its discretion to grant the request for an interim review. If the Commission does not grant the review request, the stay of publication is terminated upon notification to the firm and the PCAOB. If the Commission does grant the review request, the stay of publication shall continue unless the Commission determines otherwise in its own discretion, or unless the firm consents in writing to the PCAOB, with a copy to the Commission, to earlier publication.

(e) *Procedures where a review request has been granted.*

(1) Where the Commission has notified the firm and the PCAOB that it is granting the request for an interim review, the PCAOB may submit responsive information and documents with the Commission within 15 calendar days of receipt of such notice. The PCAOB must provide a copy of such information and documents simultaneously to the firm.

(2) During the course of the interim review, the Commission may request additional information relating to the PCAOB's assessments or determination under review, and provide a period of up to seven calendar days to respond to such request, from the PCAOB, the firm, and any associated person of the firm. The Commission may grant the firm or the PCAOB a period of up to seven calendar days to respond to any information obtained pursuant to this paragraph. The firm or the PCAOB, as applicable, shall provide simultaneously to the other party all information provided as a result of a request for additional information or responses thereto. The firm with which any associated person from whom information is requested shall provide simultaneously to the PCAOB all information provided as a result of a request for additional information or responses thereto. If the firm (including any associated person) or the PCAOB fails to respond timely to a request from the Commission, such failure may serve as the basis for the Commission to conclude its review and make a determination adverse to the non-responsive party.

(3) The Commission, based on the information submitted by the firm, the PCAOB and any associated persons, shall consider whether the PCAOB's assessments or determination are arbitrary and capricious, or otherwise not consistent with the purposes of the Act.

(4) At the conclusion of its review, the Commission shall inform the firm and the PCAOB in writing that the Commission:

(i) Does not object to all or part of the assessments or determination of the PCAOB and the stay of publication is terminated; or

(ii) Remands to the PCAOB with instructions that the stay of publication is permanent or that the PCAOB take such other actions as the Commission deems necessary or appropriate with respect to publication, including, but not limited to, revising the final inspection report or determinations before publication.

(5) The review pursuant to this section shall be completed and a written notice pursuant to this section shall be sent no more than 75 calendar days after notification to the firm and the PCAOB that the Commission is granting the request for an interim review, unless the Commission extends the period for good cause.

(f) *Treatment of review.*

(1) Time periods in this section shall be computed as provided in the Commission's Rules of Practice, 17 CFR 201.160.

(2) Unless otherwise determined by the Commission, the decision to grant or deny a review request and the conclusions of the Commission's review shall be non-public, and the information or documents submitted, created, or obtained by the Commission or its staff in the course of the review shall be deemed non-public. Nothing in this rule shall be construed to impair or limit the ability of any party to request confidential treatment under the Freedom of Information Act, 15 U.S.C. 7215(b)(5), or any other applicable law.

(3) Pursuant to 15 U.S.C. 7214(h)(2), any decision of the Commission as a result of an interim review with respect to a PCAOB inspection report, including whether a request for review is granted or denied, shall not be reviewable under 15 U.S.C. 78y and shall not be deemed to be "final agency action" for purposes of 5 U.S.C. 704.

(4) Any action taken by the Commission relates solely to the publication of the relevant inspection report and does not affect the ability of the Commission or PCAOB to take appropriate action.

(g) *Designation of address; Representation.*

(1) When a registered public accounting firm first submits a request for interim Commission review, or an associated person first submits information related to a request, the firm or associated person shall submit to the Commission, and keep current, an address at which any notice or other written communication furnished to the firm or associated person may be sent, a contact name and telephone number where the firm or associated person may be reached during business hours and, if represented, the representative's name, business address, and telephone number.

(2) If the firm, PCAOB, or associated person will be represented by a representative, the initial submission of that person shall be accompanied by the notice of appearance required by § 201.102(d). The other provisions of § 201.102 with respect to representation before the Commission shall apply.

§ 202.11 [Redesignated as § 202.190]

■ 7. Redesignate § 202.11 as § 202.190 under Subpart A.

Dated: July 26, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–18860 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–247C]

Schedules of Controlled Substances; Placement of 2,5-Dimethoxy-4-(n)-propylthiophenethylamine and N-Benzylpiperazine Into Schedule I of the Controlled Substances Act; Correction

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule: correction.

SUMMARY: The Drug Enforcement Administration (DEA) is correcting a final rule that appeared in the **Federal Register** of March 18, 2004. The final rule pertained to the scheduling of N-Benzylpiperazine (BZP), and contained an error regarding the potency of BZP relative to amphetamine. Although DEA used the correct figures in arriving at its scheduling determination, the agency is publishing this correction to provide an official statement of the actual figures. This correction does not address the scheduling of 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) which was also placed into schedule I as a result of the above cited rulemaking.

DATES: This correction is effective August 6, 2010 without further action.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

DEA is correcting an inadvertent error that occurred in a Final Rule that scheduled the substance n-Benzylpiperazine (BZP) as a schedule I controlled substance. In a Notice of Proposed Rulemaking, published on September 8, 2003 (68 FR 52872), DEA proposed the control of BZP in schedule I of the Controlled Substances Act (CSA). A Final Rule, published on March 18, 2004 (69 FR 12794), finalized the placement of BZP in schedule I of the CSA.

Each of these rules contained a misstatement in the "Supplementary Information" section, with regard to the potency differences between BZP and amphetamine. In each rule, it was erroneously stated that BZP is 10 to 20 times more potent than amphetamine. In actuality, the converse is true (*i.e.,* BZP is 10 to 20 times less potent than amphetamine.) Therefore this Rulemaking corrects this misstatement in the Final Rule. Under separate rulemaking, DEA is publishing a correction to the Notice of Proposed Rulemaking, published September 8, 2003 (68 FR 52872).

DEA emphasizes that these errors were made solely in the rules as published in the **Federal Register**. Both DEA and the U.S. Department of Health and Human Services (HHS) considered the correct BZP potencies during their scheduling deliberations. The correct potencies were included in both the HHS scientific and medical evaluation document, and in DEA's scheduling document, which were used to make the determination for control. The public docket for BZP contains both of these review documents. In addition, DEA has already published on the agency's Web site the correct figures regarding relative potency.

The determination of control of BZP was made after consideration of all the available data and all eight factors and the criteria for schedule I as specified in 21 U.S.C. 811 and 812. The amphetamine-like property of BZP was determined following the collective review and consideration of all the available evidence including drug discrimination and self-administration and other information. These studies were briefly mentioned in the rules controlling BZP as a schedule I controlled substance and were discussed in detail in the scientific and medical evaluation and scheduling

documents prepared by both HHS and DEA.

Although the potency difference between BZP and amphetamine was discussed in the rules proposing and finalizing control of BZP as a part of the scientific background information, comparisons of potency differences are only one piece of background scientific data used to evaluate the abuse potential of drugs or other substances. In addition, potency itself is not one of the factors determinative of control. In fact, there are many examples of substances of varying potencies in each schedule, including stimulants and opiates previously scheduled under the CSA.

Even though the scheduling of BZP was finalized more than six years ago, DEA has been advised that in criminal proceedings, for sentencing purposes, courts have sought to ascertain: (1) The controlled substance, for which a sentencing guideline equivalency exists, that is the most closely analogous to BZP (which is d-amphetamine) and (2) the relative potency of BZP to that of the most analogous controlled substance. As indicated above, DEA has already published on the agency's Web site the correct figures regarding relative potency. This correction is being issued to provide such an official statement in the **Federal Register** for ease of reference by courts, litigants, and others who need the information for sentencing purposes.

This correction does not address the scheduling of 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) which was also placed into schedule I as a result of the above cited rulemakings.

Correction

Accordingly, the publication on Thursday, March 18, 2004, of the Final Rule [Docket No. DEA–247F], at 69 FR 12794 [FR Doc. 04–6110], is corrected in the preamble as follows:

On page 12795, in the first column, paragraph 4, sentences 4 and 5 are corrected to read as follows: "BZP is about 20 times less potent than amphetamine in producing these effects. However, in subjects with a history of amphetamine dependence, BZP was found to be about 10 times less potent than amphetamine."

Dated: July 26, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–19348 Filed 8–5–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2010–HA–0068]

RIN 0720–AB39

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Retired Reserve for Members of the Retired Reserve

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule establishes requirements and procedures for implementation of TRICARE Retired Reserve. This interim final rule addresses provisions of the National Defense Authorization Act for Fiscal Year 2010 (NDAA–10). The purpose of this interim final rule is to establish the TRICARE Retired Reserve program that implements section 705 of the NDAA–10. Section 705 allows members of the Retired Reserve who are qualified for non-regular retirement, but are not yet 60 years of age, to qualify to purchase medical coverage equivalent to the TRICARE Standard (and Extra) benefit unless that member is either enrolled in, or is eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code, as well as certain survivors. The amount of the premium that qualified members pay to purchase these benefits will represent the full cost as determined on an appropriate actuarial basis for coverage under the TRICARE Standard (and Extra) benefit including the cost of the program administration. There will be one premium for member-only coverage and a separate premium for member and family coverage. The rules and procedures otherwise outlined in Part 199 of 32 CFR relating to the operation and administration of the TRICARE Standard and Extra programs including the required cost-shares, deductibles and catastrophic caps for retired members and their dependents will apply to this program. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates.

DATES: This rule is effective August 6, 2010. Written comments received at the address indicated below by October 5, 2010 will be considered and addressed in the final rule.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking 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 or RIN 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: Jody Donehoo, TRICARE Management Activity, TRICARE Policy and Operations, telephone (703) 681–0039.

Questions regarding payment of specific claims under the TRICARE allowable charge method should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The purpose of this interim final rule is to establish the TRICARE Retired Reserve program that implements section 705 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA–10) (Pub. L. 111–84). Section 705 added new section 1076e to Title 10, United States Code. Section 1076e allows members of the Retired Reserve who are qualified for non-regular retirement, but are not yet 60 years of age, as well as certain survivors to qualify to purchase medical coverage equivalent to the TRICARE Standard (and Extra) benefit unless that member is either enrolled in, or eligible to enroll in, a health benefits plan under Chapter 89 of Title 5, United States Code.

II. Provisions of the Rule Regarding the TRICARE Retired Reserve Program

A. *Establishment of the TRICARE Retired Reserve Program* (paragraph 199.25(a)). This paragraph describes the nature, purpose, statutory basis, scope, and major features of TRICARE Retired Reserve, a premium-based medical coverage program that was made available for purchase worldwide by certain members of the Retired Reserve, their family members and their surviving family members. TRICARE Retired Reserve is authorized by 10 U.S.C. 1076e.

The major features of the program include making coverage available for purchase by any Retired Reserve member who is qualified for non-regular

retirement, but is not yet 60 years of age, unless that member is either enrolled in, or eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code, as well as certain survivors of Retired Reserve members as specified below. The amount of the premium that qualified members and qualified survivors pay is prescribed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) and determined using an appropriate actuarial basis. There is one premium for member-only coverage and a second premium for member and family coverage. Additionally, TRICARE rules outlined in Part 199 of Title 32 of the CFR relating to the TRICARE Standard and Extra programs apply unless otherwise specified. Certain special TRICARE programs are not part of TRICARE Retired Reserve including the Extended Health Care Option (ECHO) program and the Supplemental Health Care Program (*see* § 199.16) except when referred by a Military Treatment Facility (MTF) provider for incidental consults and the MTF provider maintains clinical control over the episode of care. The TRICARE Retiree Dental Program is already available independently for purchase by Retired Reserve members under 10 U.S.C. 1076c as implemented by 32 CFR 199.22.

Under TRICARE Retired Reserve, qualified members (or their qualified survivors) may purchase either the member-only type of coverage or the member and family type of coverage by submitting a completed request in the appropriate format along with an initial payment of the applicable premium at the time of enrollment. When their coverage becomes effective, TRICARE Retired Reserve beneficiaries receive the TRICARE Standard (and Extra) benefit. TRICARE Retired Reserve features the deductible and cost sharing provisions of the TRICARE Standard (and Extra) plan for retired members and dependents of retired members. Both the member and the member's covered family members are provided access priority for care in military treatment facilities on the same basis as retired members and their family members who are not enrolled in TRICARE Prime.

B. *Qualifications for TRICARE Retired Reserve coverage* (paragraph 199.25(b)). This paragraph defines the statutory conditions under which members of a Reserve component may qualify to purchase TRICARE Retired Reserve coverage. The Reserve components of the armed forces have the responsibility to determine and validate a member's qualifications to purchase TRICARE Retired Reserve coverage. The member's Service personnel office is responsible for keeping the Defense Enrollment Eligibility Reporting System (DEERS) current with eligibility data.

A member qualifies to purchase TRICARE Retired Reserve coverage if the member meets both of the following conditions:

(a) is a member of the Retired Reserve of a Reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of title 10, U.S.C., but is not age 60; and

(b) is not enrolled, or eligible to enroll, in a health benefits plan under chapter 89 of title 5 U.S.C.

If a qualified member of the Retired Reserve dies while in a period of TRICARE Retired Reserve coverage, the immediate family member(s) of such member shall remain qualified to continue existing or purchase new TRICARE Retired Reserve coverage until the date on which the deceased member of the Retired Reserve would have attained age 60 as long as they meet the definition of immediate family member specified below. This applies regardless of whether either member-only coverage or member and family coverage was in effect on the day of the TRICARE Retired Reserve member's death.

C. *TRICARE Retired Reserve premiums* (paragraph 199.25(c)). Members are charged premiums for coverage under TRICARE Retired Reserve that represent the full cost of providing the TRICARE Standard (and Extra) benefit under this program. The total annual premium amounts shall be determined by the ASD(HA) using an appropriate actuarial basis and are established and updated annually, on a calendar year basis, by the ASD(HA) for qualified members of the Retired Reserve for each of the two types of coverage, member-only coverage and member-and-family coverage. Premiums are to be paid monthly. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

A surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described herein will pay premium rates at the member-only rate if there is only one surviving family member to be covered by TRICARE Retired Reserve and at the member and family rate if there are two or more survivors to be covered.

The appropriate actuarial basis used for calculating premium rates shall be one that most closely approximates the actual cost of providing care to the same demographic population as those enrolled in TRICARE Retired Reserve as determined by the ASD(HA). TRICARE Retired Reserve premiums shall be based on the actual costs of providing benefits to TRICARE Retired Reserve members and their family members during the preceding years if the population of Retired Reserve members enrolled in TRICARE Retired Reserve is large enough during those preceding years to be considered actuarially appropriate. Until such time that actual costs from those preceding years become available, TRICARE Retired Reserve premiums shall be based on the actual costs during the preceding calendar years for providing benefits to the population of retired members and their family members in the same age categories as the Retired Reserve population in order to make the underlying group actuarially appropriate.

An adjustment may be applied to cover overhead costs for administration of the program by the government. Additionally, premium adjustments may be made to cover the prospective costs of any significant program changes or any actual experience in the costs of administering the TRICARE Retired Reserve program.

A surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described herein will pay premium rates at the member-only rate if there is only one surviving family member to be covered by TRICARE Retired Reserve and at the member and family rate if there are two or more survivors to be covered.

For the portion of calendar year 2010 during which the program is in effect, the monthly premium for member-only coverage will be $388.31/month (annual premium $4,659.72/year), and the monthly premium for member and family coverage will be $976.41/month (annual premium $11,716.92/year). The 2010 premiums are based on the actual costs during calendar years 2007 and 2008 for providing benefits to the population of retired members and their family members in the same age categories as the Retired Reserve population in order to make the underlying group actuarially appropriate. The historical costs were trended forward to 2010 and a two-percent adjustment was applied to cover overhead costs for administration of the program by the government.

For calendar year 2011, the monthly premium for member-only coverage will be $408.01/month (annual premium $4,896.12/year), and the monthly premium for member and family coverage will be $1,020.05/month (annual premium $12,240.60/year). The 2011 premiums are based on the actual costs during calendar years 2008 and

2009 for providing benefits to the population of retired members and their family members in the same age categories as the Retired Reserve population in order to make the underlying group actuarially appropriate. The historical costs were trended forward to 2011 and a two-percent adjustment was applied to cover overhead costs for administration of the program by the government.

D. *Procedures* (paragraph 199.25(d)). The Director, TRICARE Management Activity (TMA), may establish procedures for the following:

—*Purchasing Coverage.* Procedures may be established for a qualified member, including surviving family members, to purchase one of two types of coverage: Member-only coverage or member-and-family coverage. Immediate family members of the Retired Reserve member may be included in such family coverage. To purchase either type of TRICARE Retired Reserve coverage, Retired Reserve members or their survivors qualified as above must complete and submit a request in the appropriate format, along with an initial payment of the applicable premium required above.

—*Continuation Coverage.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage with an effective date immediately following the date of termination of coverage under another TRICARE program.

—*Qualifying Life Event.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage on the occasion of a qualifying life event that changes the immediate family composition (*e.g.,* birth, death, adoption, divorce, etc.). The effective date for TRICARE Retired Reserve coverage will coincide with the day of the qualifying life event. It is the responsibility of the member to provide personnel officials with the necessary evidence required to substantiate the change in immediate family composition. Personnel officials will update DEERS in the usual manner. Appropriate action will be taken upon receipt of the completed request in the appropriate format along with an initial payment of the applicable premium in accordance with established procedures.

—*Open Enrollment.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage at any time. The effective date of coverage will coincide with the first day of a month.

—*Survivor coverage under TRICARE Retired Reserve.* Procedures may be established for a surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described above to continue existing or to purchase new TRICARE Retired Reserve coverage. Procedures similar to those for qualifying life events may be established for a qualified surviving family member to purchase new or continuing coverage with an effective date coinciding with the day of the member's death. Procedures similar to those for open enrollment may be established for a qualified surviving family member to purchase new coverage at any time with an effective date coinciding with the first day of a month.

—*Changing type of coverage.* Procedures may be established for TRICARE Retired Reserve members or qualified survivors to request to change type of coverage during open enrollment or on the occasion of a qualifying life event that changes immediate family composition as described above by submitting a completed request in the appropriate format.

—*Termination.* Termination of coverage for the member will result in termination of coverage for the member's family members in TRICARE Retired Reserve, except for qualified survivors as described above.

—Coverage will terminate whenever a member (or qualified survivors) ceases to meet the qualifications for the program. For purposes of this section, the member no longer qualifies for TRICARE Retired Reserve when the member has been eligible for more than 60 days for coverage in a health benefits plan under Chapter 89 of Title 5, U.S.C. This affords the member sufficient time to make arrangements for health coverage and avoid any lapses in health coverage. Further, coverage shall terminate when the Retired Reserve member attains the age of 60 or, if survivor coverage is in effect, when the deceased Retired Reserve member would have attained the age of 60.

—Coverage may terminate for members who gain coverage under another TRICARE program.

—Failure to make a premium payment in a timely manner in accordance with established procedures will result in termination of coverage for the member and any covered family members and will result in denial of claims for services with a date of service after the effective date of termination.

—Procedures may be established for covered members and survivors to request termination of coverage at any time by submitting a completed request in the appropriate format.

—Members whose coverage under TRICARE Retired Reserve terminates upon their request or for failure to pay premiums will not be allowed to purchase coverage under TRICARE Retired Reserve to begin again for a period of one year following the effective date of termination.

—*Processing.* Upon receipt of a completed request in the appropriate format, the appropriate enrollment actions will be processed into DEERS in accordance with established procedures.

—*Periodic revision.* Periodically, certain features, rules or procedures of TRICARE Retired Reserve may be revised. If such revisions will have a significant effect on members' or survivors' costs or access to care, members or survivors may be given the opportunity to change their type of coverage or terminate coverage coincident with the revisions.

E. *Preemption of State laws* (paragraph 199.25(e)). This paragraph explains that the preemptions of State and local laws established for the TRICARE program also apply to TRICARE Retired Reserve. Any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Retired Reserve.

This includes State and local laws imposing premium taxes on health insurance carriers, underwriters or other plan managers, or similar taxes on such entities. Preemption does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

F. *Administration* (paragraph 199.25(f)). This paragraph provides that the Director, TRICARE Management Activity, may establish other rules and

procedures necessary for the effective administration of TRICARE Retired Reserve and may authorize exceptions to requirements of this section, if permitted by law, based on extraordinary circumstances.

G. *Terminology.* The following terms are applicable to the TRICARE Retired Reserve program.

—*Coverage.* This term means the medical benefits covered under the TRICARE Standard or Extra programs as further outlined in other sections of part 199 of Title 32 of the Code of Federal Regulations, whether delivered in military treatment facilities or purchased from civilian sources.

—*Immediate family member.* This term means spouse (except former spouse) as defined in paragraph 199.3(b)(2)(i) of this part, or child as defined in paragraph 199.3 (b)(2)(ii).

—*Qualified member.* This term means a member who has satisfied all the criteria that must be met before the member is authorized for TRR coverage.

—*Qualified survivor.* This term means an immediate family member who has satisfied all the criteria that must be met before the survivor is authorized for TRR coverage.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This interim final rule is not subject to any of those requirements because it would not have any of these substantial impacts.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

We have examined the impact(s) of the interim final rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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. The preemption provisions in the rule conform to law and long-established TRICARE policy. Therefore, consultation with State and local officials is not required.

This rule is being published as an interim final rule with comment period as an exception to our standard practice of soliciting public comment under a proposed rule first, in order to comply with the requirements of the National Defense Authorization Act for Fiscal Year 2010, Public Law 110–417, section 705, which was enacted on October 28, 2009. This section provides in pertinent part that this provision applies "to coverage for months beginning on or after October 1, 2009." In order to provide coverage as soon possible consistent with statutory entitlement, the ASD(HA) has determined that obtaining prior public comment is unnecessary, impractical, and contrary to the public interest. Public comments are welcome and will be considered before publication of the final rule.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2(b) is amended by adding at the appropriate place in alphabetical order the definition of "TRICARE Retired Reserve" to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

TRICARE Retired Reserve. The program established to allow members of the Retired Reserve who are qualified for non-regular retirement, but are not yet 60 years of age, as well as certain survivors to qualify to purchase medical coverage equivalent to the TRICARE Standard (and Extra) benefit unless that member is either enrolled in, or eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code. The program benefits and requirements are set forth in section 25 of this Part.

* * * * *

■ 3. Section 199.25 is added as follows:

§ 199.25 TRICARE Retired Reserve.

(a) *Establishment.* TRICARE Retired Reserve is established for the purpose of offering the medical benefits provided under the TRICARE Standard and Extra programs to qualified members of the Retired Reserve, their immediate family members, and qualified survivors.

(1) *Purpose.* As specified in paragraph (c) of this section, TRICARE Retired Reserve is a premium-based health plan that is available for purchase by any Retired Reserve member who is qualified for non-regular retirement, but is not yet 60 years of age, unless that member is either enrolled in, or eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code, as well as certain survivors of Retired Reserve members.

(2) *Statutory Authority.* TRICARE Retired Reserve is authorized by 10 U.S.C. 1076e.

(3) *Scope of the Program.* TRICARE Retired Reserve is geographically applicable to the same extent as specified in 32 CFR 199.1(b)(1).

(4) *Major Features of TRICARE Retired Reserve.* The major features of the program include the following:

(i) *TRICARE rules applicable.* (A) Unless specified in this section or otherwise prescribed by the ASD (HA), provisions of 32 CFR part 199 apply to TRICARE Retired Reserve.

(B) Certain special programs established in 32 CFR part 199 are not available to members covered under TRICARE Retired Reserve. These include the Extended Health Care Option (ECHO) program and the Supplemental Health Care Program (see § 199.16) except when referred by a Military Treatment Facility (MTF) provider for incidental consults and the MTF provider maintains clinical control over the episode of care. The TRICARE Retiree Dental Program (see § 199.13) is independent of this program and is otherwise available to all members who qualify for the TRICARE Retiree Dental Program whether or not they purchase TRICARE Retired Reserve coverage. The Continued Health Care Benefits Program (see § 199.13) is also independent of this program and is otherwise available to all members who qualify for the Continued Health Care Benefits Program.

(ii) *Premiums.* TRICARE Retired Reserve coverage is available for purchase by any Retired Reserve member if the member fulfills all of the statutory qualifications as well as certain survivors. A member of the Retired Reserve or qualified survivor covered under TRICARE Retired Reserve shall pay the amount equal to the total amount that the ASD(HA) determines on an appropriate actuarial basis as being appropriate for that coverage. There is one premium rate for member-only coverage and one

premium rate for member and family coverage.

(iii) *Procedures.* Under TRICARE Retired Reserve, Retired Reserve members (or their survivors) who fulfilled all of the statutory qualifications may purchase either the member-only type of coverage or the member and family type of coverage by submitting a completed request in the appropriate format along with an initial payment of the applicable premium. Procedures for purchasing coverage and paying applicable premiums are prescribed in this section.

(iv) *Benefits.* When their coverage becomes effective, TRICARE Retired Reserve beneficiaries receive the TRICARE Standard (and Extra) benefit including access to military treatment facilities on a space available basis and pharmacies, as described in § 199.17 of this part. TRICARE Retired Reserve coverage features the deductible and cost share provisions of the TRICARE Standard (and Extra) plan for retired members and dependents of retired members. Both the member and the member's covered family members are provided access priority for care in military treatment facilities on the same basis as retired members and their dependents who are not enrolled in TRICARE Prime as described in paragraph 199.17(d)(1)(E) of this Part.

(b) *Qualifications for TRICARE Retired Reserve coverage—(1) Retired Reserve Member.* A Retired Reserve member qualifies to purchase TRICARE Retired Reserve coverage if the member meets both the following criteria:

(i) Is a member of a Reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of title 10, U.S.C., but who is not yet age 60 and

(ii) Is not enrolled in, or eligible to enroll in, a health benefits plan under chapter 89 of title 5, U.S.C.

(2) *Retired Reserve Survivor.* If a qualified member of the Retired Reserves dies while in a period of TRICARE Retired Reserve coverage, the immediate family member(s) of such member shall remain qualified to purchase new or continue existing TRICARE Retired Reserve coverage until the date on which the deceased member of the Retired Reserve would have attained age 60 as long as they meet the definition of immediate family members specified in paragraph (g)(2) of this section. This applies regardless whether either member-only coverage or member and family coverage was in effect on the day of the TRICARE Retired Reserve member's death.

(c) *TRICARE Retired Reserve premiums.* Members are charged premiums for coverage under TRICARE Retired Reserve that represent the full cost of the program as determined by the ASD(HA) utilizing an appropriate actuarial basis for the provision of the benefits provided under the TRICARE Standard and Extra programs for the TRICARE Retired Reserve eligible beneficiary population. Premiums are to be paid monthly. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

(1) *Annual establishment of rates.* (i) TRICARE Retired Reserve monthly premium rates shall be established and updated annually on a calendar year basis by the ASD(HA) for each of the two types of coverage, member-only coverage and member-and-family coverage.

(ii) The appropriate actuarial basis used for calculating premium rates shall be one that most closely approximates the actual cost of providing care to the same demographic population as those enrolled in TRICARE Retired Reserve as determined by the ASD(HA). TRICARE Retired Reserve premiums shall be based on the actual costs of providing benefits to TRICARE Retired Reserve members and their dependents during the preceding years if the population of Retired Reserve members enrolled in TRICARE Retired Reserve is large enough during those preceding years to be considered actuarially appropriate. Until such time that actual costs from those preceding years becomes available, TRICARE Retired Reserve premiums shall be based on the actual costs during the preceding calendar years for providing benefits to the population of retired members and their dependents in the same age categories as the retired reserve population in order to make the underlying group actuarially appropriate. An adjustment may be applied to cover overhead costs for administration of the program by the government.

(2) *Premium adjustments.* In addition to the determinations described in paragraph (c)(1) of this section, premium adjustments may be made prospectively for any calendar year to reflect any significant program changes or any actual experience in the costs of administering the TRICARE Retired Reserve Program.

(3) *Survivor Premiums.* A surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described herein will pay premium rates at the member-only rate if there is only one surviving family member to be covered by TRICARE Retired Reserve and at the member-and-family rate if there are two or more survivors to be covered.

(d) *Procedures.* The Director, TRICARE Management Activity (TMA), may establish procedures for the following.

(1) *Purchasing Coverage.* Procedures may be established for a qualified member to purchase one of two types of coverage: member-only coverage or member and family coverage. Immediate family members of the Retired Reserve member may be included in such family coverage. To purchase either type of TRICARE Retired Reserve coverage for effective dates of coverage described below, Retired Reserve members and survivors qualified under either paragraph (b)(1) or (b)(2) of this section must submit a request in the appropriate format, along with an initial payment of the applicable premium required by paragraph (c) of this section in accordance with established procedures.

(i) *Continuation Coverage.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage with an effective date immediately following the date of termination of coverage under another TRICARE program.

(ii) *Qualifying Life Event.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage on the occasion of a qualifying life event that changes the immediate family composition (*e.g.,* birth, death, adoption, divorce, etc.) that is eligible for coverage under TRICARE Retired Reserve. The effective date for TRICARE Retired Reserve coverage will coincide with the date of the qualifying life event. It is the responsibility of the member to provide personnel officials with the necessary evidence required to substantiate the change in immediate family composition. Personnel officials will update DEERS in the usual manner. Appropriate action will be taken upon receipt of the completed request in the appropriate format along with an initial payment of the applicable premium in accordance with established procedures.

(iii) *Open Enrollment.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage at any time. The effective date of coverage will coincide with the first day of a month.

(iv) *Survivor coverage under TRICARE Retired Reserve.* Procedures may be established for a surviving family member of a qualified Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described in paragraph (b)(2) of this section to

purchase new TRICARE Retired Reserve coverage or continue existing TRICARE Retired Reserve coverage. Procedures similar to those for qualifying life events may be established for a qualified surviving family member to purchase new or continuing coverage with an effective date coinciding with the day of the member's death. Procedures similar to those for open enrollment may be established for a qualified surviving family member to purchase new coverage at any time with an effective date coinciding with the first day of a month.

(2) *Changing type of coverage.* Procedures may be established for TRICARE Retired Reserve members/survivors to request to change type of coverage during open enrollment as described in paragraph (d)(1)(iii) of this section or on the occasion of a qualifying life event that changes immediate family composition as described in paragraph (d)(1)(ii) of this section by submitting a completed request in the appropriate format.

(3) *Termination.* Termination of coverage for the member will result in termination of coverage for the member's family members in TRICARE Retired Reserve, except as described in paragraphs (d)(1)(iv) of this section. The termination will become effective in accordance with established procedures.

(i) Coverage shall terminate for members or their survivors who no longer qualify for TRICARE Retired Reserve as specified in paragraph (c) of this section. For purposes of this section, the member or their survivor no longer qualifies for TRICARE Retired Reserve when the member has been eligible for coverage in a health benefits plan under Chapter 89 of Title 5, U.S.C. for more than 60 days. Further, coverage shall terminate when the Retired Reserve member attains the age of 60 or, if survivor coverage is in effect, when the deceased Retired Reserve member would have attained the age of 60.

(ii) Coverage may terminate for members and survivors who gain coverage under another TRICARE program.

(iii) Coverage shall terminate for members and survivors who fail to make a premium payment in accordance with established procedures.

(iv) Procedures may be established for covered members and survivors to request termination of coverage at any time by submitting a completed request in the appropriate format.

(v) Members or qualified survivors whose coverage under TRICARE Retired Reserve terminates under paragraph (d)(3)(iii) or (d)(3)(iv) of this section will not be allowed to purchase coverage under TRICARE Retired Reserve to begin again for a period of one year following the effective the date of termination.

(4) *Processing.* Upon receipt of a completed request in the appropriate format, enrollment actions will be processed into DEERS in accordance with established procedures.

(5) *Periodic revision.* Periodically, certain features, rules or procedures of TRICARE Retired Reserve may be revised. If such revisions will have a significant effect on members' or survivors' costs or access to care, members or survivors may be given the opportunity to change their type of coverage or terminate coverage coincident with the revisions.

(e) *Preemption of State laws.*—(1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs, at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to contracts that implement this section.

(2) Based on the determination set forth in paragraph (f)(1) of this section, any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Retired Reserve. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to TRICARE Retired Reserve. (However, the Department of Defense may, by contract, establish legal obligations on the part of DoD contractors to conform with requirements similar to or identical to requirements of State or local laws or regulations with respect to TRICARE Retired Reserve).

(3) The preemption of State and local laws set forth in paragraph (f)(2) of this section includes State and local laws imposing premium taxes on health insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of 10 U.S.C. 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those of the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(f) *Administration.* The Director, TRICARE Management Activity, may establish other rules and procedures for the effective administration of TRICARE Retired Reserve and may authorize exceptions to requirements of this section, if permitted by law, based on extraordinary circumstances.

(g) *Terminology.* The following terms are applicable to the TRICARE Retired Reserve program.

(1) *Coverage.* This term means the medical benefits covered under the TRICARE Standard or Extra programs as further outlined in other sections of Part 199 of Title 32 of the Code of Federal Regulations, whether delivered in military treatment facilities or purchased from civilian sources.

(2) *Immediate family member.* This term means spouse (except former spouses) as defined in paragraph 199.3(b)(2)(i) of this part, or child as defined in paragraph 199.3 (b)(2)(ii).

(3) *Qualified member.* This term means a member who has satisfied all the criteria that must be met before the member is authorized for TRR coverage.

(4) *Qualified survivor.* This term means an immediate family member who has satisfied all the criteria that must be met before the survivor is authorized for TRR coverage.

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19313 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2008–HA–0060]

RIN 0720–AB26

TRICARE; Rare Diseases Definition

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the definition of rare diseases to adopt the definition of a rare disease as promulgated by the National Institutes of Health, Office of Rare Diseases. The rule modification will result in the definition used by the TRICARE program for a rare disease to be consistent with the definition used by the National Institutes of Health and the Food and Drug Administration. TRICARE has generally been applying the broader National Institutes of Health and Food and Drug Administration definitions when making coverage decisions for treatments; therefore, there will be no practical changes for beneficiaries.

DATES: *Effective Date:* This rule is effective September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Commander James Ellzy, TRICARE Management Activity, Office of the Chief Medical Officer, telephone (703) 681–0064.

SUPPLEMENTARY INFORMATION:

A. Background

On January 6, 1997, the Office of the Secretary of Defense published a final rule in the **Federal Register** (62 FR 627–631) clarifying the TRICARE exclusion of unproven drugs, devices and medical treatments and procedures and adding a definition of rare diseases to be used in the TRICARE Program. TRICARE defined a rare disease as one which affects fewer than one in 200,000 Americans. Upon further review, TRICARE is revising the definition to be in compliance with the definition of other federal agencies. The Office of Rare Diseases was initially established as part of the National Institutes of Health in 1993 to promote research and collaboration on rare and orphan diseases. The Rare Diseases Act of 2002 (Pub. L. 107–280) codified the establishment of the Office of Rare Diseases by adding a section 404F to the Public Health Service Act (42 U.S.C. 283h). This statute defines a rare disease as "any disease or condition that affects less than 200,000 persons in the United States." Additionally, Section 526(a)(2) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360bb(a)(2)), provides, in part, that the term "rare disease or condition" means any disease or condition which affects less than 200,000 persons in the United States. This rule modification will result in the definition used by the TRICARE program for a rare disease to be consistent with the definition used by the National Institutes of Health and the Food and Drug Administration.

B. Public Comments

The Department of Defense published a proposed rule on July 24, 2009 (74 FR 36639–36640). No comments were received on the proposed rule before the comment period closed.

C. Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

Section 801 of title 5, United States Code (U.S.C.), and Executive Order (E.O.) 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, or a significant regulatory action under the provisions of E.O. 12866.

Section 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

It has been certified that his rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule will not significantly affect a substantial number of small entities for purposes of the RFA.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Executive Order 13132, "*Federalism*"

This final rule has been examined for its impact under E.O. 13132 and it does not contain policies that have federalism implications that would 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; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Section 199.2(b) is amended by revising the definition of "Rare diseases" as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Rare diseases. TRICARE/CHAMPUS defines a rare disease as any disease or condition that has a prevalence of less than 200,000 persons in the United States.

* * * * *

Dated: July 26, 2010.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19308 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2009–HA–0094]

RIN 0720–AB32

TRICARE; Diabetic Education

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is publishing this final rule to clarify TRICARE coverage for diabetic education. This rule introduces new definitions and addresses revisions or

omissions in policy or procedure inadvertently missed in previous regulatory changes pertaining to diabetic education.

DATES: *Effective Date:* This final rule is effective September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Saly, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676–3742. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION: This final rule introduces new definitions and addresses revisions or omissions in policy or procedure inadvertently missed in previous regulatory changes pertaining to diabetic education.

Diabetes self-management training (DSMT) is an interactive, collaborative process involving beneficiaries with diabetes, their physician(s), and their educators. The educational process should provide the beneficiary with the knowledge and skills needed to perform self-care, manage crises, and make lifestyle changes required to manage the diabetes successfully.

TRICARE had previously classified DSMT as a counseling service that was not medically necessary. Since all services provided under the TRICARE program must be medically necessary and appropriate, DSMT was excluded from coverage. In developing the TRICARE policy on self-management, however, it was determined that diabetes educational services are consistent with the medically necessary and appropriate provision and it was decided to conform with Medicare's policy on DSMT. As such, TRICARE removed "diabetic self-management training" programs as an excluded benefit effective July 1, 1998. Although the policy change conflicted with existing regulation language, TRICARE determined to move forward with the policy change because TRICARE was expanding and not restricting a benefit, and the change was in line with Medicare's benefit. This final rule corrects the failure to amend the language of the regulation and brings the regulation into conformance with the current policy.

Section 199.4 provides basic program benefits.

Section 199.4(d)(3)(ix) Diabetic self-management training (DSMT) is added as a benefit under other covered services and supplies. This addition brings the regulation into conformance with the current policy.

Section 199.4(g)(39) is revised to remove diabetic self-education programs as an exclusion.

Section 199.6 addresses authorized providers.

Section 199.6(c)(3)(iii)(L) adds Nutritionist to the list of individual professional providers of medical care authorized to provide services to CHAMPUS beneficiaries.

Section 199.6(c)(3)(iii)(M) adds Registered Dietitian to the list of individual professional providers of medical care authorized to provide services to CHAMPUS beneficiaries.

Public Comments

A proposed rule (74 FR 44798–44800) was published on August 31, 2009, and provided a 60-day comment period. No comments were received.

Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

Section 801 of Title 5, United States Code (U.S.C.), and Executive Order (E.O.) 12866, require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not a significant regulatory action.

Public Law 96–354, "*Regulatory Flexibility Act*" *(RFA) (5 U.S.C. 601)*

Public Law (Pub. L.) 96–354, "Regulatory Flexibility Act" (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

This rule does not contain a "collection of information" requirement, and will not impose additional information collection requirements on the public under Pub. L. 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

Public Law 104–4, Section 202, "*Unfunded Mandates Reform Act*"

Section 202 of Public Law 104–4, "Unfunded Mandates Reform Act," requires that an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this final rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus, this final rule is not subject to this requirement.

Executive Order 13132, "*Federalism*"

E.O. 13132, "Federalism," requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this final rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR Part 199, is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Section 199.4 is amended by adding paragraph (d)(3)(ix), and revising paragraph (g)(39) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ix) *Diabetes Self-Management Training (DSMT).* A training service or program that educates diabetic patients about the successful self-management of diabetes. It includes the following criteria: Education about self-monitoring of blood glucose, diet, and exercise; an insulin treatment plan developed specifically for the patient who is insulin-dependent; and motivates the patient to use the skills for self-management. The DSMT service or program must be accredited by the American Diabetes Association.

Coverage limitations on the provision of this benefit will be as determined by the Director, TRICARE Management Activity, or designee.

* * * * *

(g) * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical

condition: For example, educational counseling, vocational counseling, nutritional counseling, and counseling for socioeconomic purposes, stress management, lifestyle modification. Services provided by a certified marriage and family therapist, pastoral, or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in Section 199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized treatment setting and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost rate.

* * * * *

■ 3. Section 199.6 is amended by adding paragraphs (c)(3)(iii)(L) and (M) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(L) *Nutritionist.* A nutritionist may provide DSMT via an accredited DSMT program. The nutritionist must be licensed by the State in which the care is provided, and must be under the supervision of a physician who is overseeing the DSMT program.

(M) *Registered Dietitian.* A dietitian may provide DSMT via an accredited DSMT program. The dietitian must be licensed by the State in which the care is provided, and must be under the supervision of a physician who is overseeing the DSMT program.

* * * * *

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19311 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2008–HA–0025; 0720–AB20]

32 CFR Part 199

TRICARE: Changes Included in the National Defense Authorization Act for Fiscal Year 2007; Improvements to Descriptions of Cancer Screening for Women

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to implement section 703 of the National Defense Authorization Act (NDAA) for Fiscal Year 2007 (FY07), Public Law 109–364. Specifically, that legislation authorizes breast cancer screening and cervical cancer screening for female beneficiaries of the Military Health System, instead of constraining such testing to mammograms and Papanicolaou smears. The rule allows coverage for "breast cancer screening" and "cervical cancer screening" for female beneficiaries of the Military Health System, instead of constraining such testing to mammograms and Papanicolaou tests. This rule ensures new breast and cervical cancer screening procedures can be added to the TRICARE benefit as such procedures are proven to be a safe, effective, and nationally accepted medical practice. This amends the cancer specific recommendations for breast and cervical cancer screenings to be brought in line with the processes for updating other cancer screening recommendations. In response to public comment on the proposed rule, this final rule includes a clarification that the benefit encompasses screening based on Health and Human Services guidelines.

DATES: *Effective Date:* This rule is effective September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Commander James Ellzy, Office of the Chief Medical Officer, TRICARE Management Activity, telephone (703) 681–0064.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense updated coverage for screening with the use of the breast MRI for women in a designated high risk category as advised by the American Cancer Society. In the process of providing this additional coverage, it was discovered that because of statutory wording, there was a group of high risk women that are standard beneficiaries under the age of 35 for whom this coverage could not be provided without an amendment in the Code of Federal Regulations (CFR). Amending the CFR will provide coverage for breast MRI screening for all Department of Defense beneficiaries in the high risk category recommended by the American Cancer Society.

B. Public Comments

The Department of Defense published a proposed rule on July 24, 2009 (74 FR 36638–36639). A single comment was received asking that the language be written more clearly. The final rule includes language in section (g)(37)(viii) that is more precise in terms of which cancers will be covered and notes that cervical and breast cancer screenings will be provided in accordance with the standards based on the guidelines from the U.S. Department of Health and Human Services.

C. Regulatory Procedures

Executive Order (EO) 12866 and Regulatory Flexibility Act

E.O. 12866 requires a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements. This rule, although not economically significant, is a significant rule under E.O. 12866 and has been reviewed by the Office of Management and Budget. Amending the CFR will provide coverage for breast MRI screening for all Department of Defense beneficiaries in the high risk category, if necessary. It is critically important that we eliminate any potential gaps in coverage for high risk individuals as quickly as possible.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Unfunded Mandates Reform Act

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private section, of $100 million or more in any one year.

Executive Order (EO) 13132

We have examined the impact(s) of the final rule under E.O. 13132 and it does not have policies that have Federalism implications that would 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, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental Health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR, Part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C., chapter 55.

■ 2. Section 199.4 is amended by:

■ A. Revising paragraphs (g)(37)(viii) and (ix).

■ B. Redesignating paragraphs (g)(37)(x) through (g)(37)(xii) as (g)(37)(xi) through (g)(37)(xiii).

■ C. Adding a new paragraph (g)(37)(x).

The revisions and additions read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(37) * * *

(viii) Cervical and breast cancer screenings in accordance with standards issued by the Director, TRICARE Management Activity, based on guidelines from the U.S. Department of Health and Human Services. Such standards may establish a specific schedule, including frequency, age specifications, and gender of the beneficiary, as appropriate.

(ix) Health promotion and disease prevention visits may include all of the services provided pursuant to § 199.18(b)(2) and may be provided in connection with immunizations and cancer screening examinations authorized by paragraphs (g)(37)(ii) or (g)(37)(viii) of this section.

(x) Physical examinations for beneficiaries ages 5–11 that are required in connection with school enrollment, and that are provided on or after October 30, 2000.

* * * * *

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19307 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0754]

RIN 1625–AA09

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations of the Berkley (I–264) Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. This change will allow the drawbridge to operate with four opening periods between the rush hours until October 5, 2012, relieving increased vehicular traffic congestion while still providing for the reasonable needs of navigation.

DATES: This rule is effective from 9 a.m. on September 4, 2010, until 2:30 p.m. on October 5, 2012.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0754 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0754 in the "Keyword" box, and 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 Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at 757–398–6587. 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 October 9, 2009, we published a notice of temporary deviation request for comments entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the **Federal Register** (74 FR 52143) and a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the **Federal Register** (74 FR 52158). We received 861 comments on the published deviation and NPRM.

On March 3, 2010, we published another notice of temporary deviation request for comments entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the **Federal Register** (75 FR 9521) and a supplemental notice of proposed rulemaking (SNPRM) entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the **Federal Register** (75 FR 9557). We received four comments on the published deviation and SNPRM. No public meeting was requested, and none was held.

Background and Purpose

On behalf of the Cities of Chesapeake and Norfolk Virginia, the Virginia Department of Transportation (VDOT) who owns and operates the lift-type Berkley Bridge requested a temporary change to the existing bridge regulations. In the closed to navigation position, the Berkley Bridge has a vertical clearance of 48 feet above mean high water. The current regulation set out in Title 33 CFR Part 117.1007(b) and (c) allows the Berkley Bridge, mile 0.4, in Norfolk, Virginia to remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (757) 494–2490, as required by 33 CFR 117.1007(b) and (c). Vessel traffic on this waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs seeking repairs. There is no alternate waterway route.

Due to a temporary closure of two area bridges, there has been a significant increase in vehicular traffic on the Berkley Bridge causing back-ups, delays, and congestion on the bridge and its approaches. The NPRM proposed opening the draw of the Berkley Bridge on signal at 9 a.m., 11 a.m., 1 p.m., and 2:30 p.m. from October 9, 2009 to October 5, 2012, and

permitted VDOT to monitor, measure, and identify congested roadway locations during heavy traffic periods. By implementing scheduled bridge openings, we anticipated a decrease in vehicular traffic congestion during the daylight hours.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [USCG–2009–0754] was issued to allow VDOT to test the proposed schedule and to obtain data and public comments. The test period was in effect during the entire Notice of Proposed Rulemaking comment period. Also, a count of the delayed vessels during the closure periods was taken to determine the impact of the proposed regulation on navigation.

The Berkley Bridge is the principle arterial route in and out of the City of Norfolk and serves as the major evacuation highway in the event of emergencies. The average daily traffic volumes at the Berkley Bridge for the last quarter of calendar year 2008, as submitted by VDOT with its request for schedule change, are as follows:

October, 2008—83,296 vehicles
November, 2008—99,643 vehicles
December, 2008—106,856 vehicles

The traffic counts revealed that from October 2008 to December 2008, the Berkley Bridge experienced a seven percent (or 23,560-car) increase in traffic flow. The Coast Guard received 861 responses to the NPRM. The vast majority of those responses (850) were supplied from an internet Web site survey posted by VDOT. Of the 850 VDOT-sponsored surveys, 484 had written comments in addition to responses to the survey with the other 366 comments containing only responses to the survey questionnaire. The remaining 11 responses consisted of 7 paper comments and 4 e-mails.

All but five of the favored the new schedule presented in the temporary deviation and NPRM. Many responses stated that planned openings would permit motorists to better plan their commutes and thereby avoid delays.

Four local maritime facilities and the Virginia Maritime Association (VMA), who represents waterborne commerce in the Port of Hampton Roads, responded with their concerns opposing the new schedule. These organizations expressed concerns that the proposed regulatory actions created unsafe conditions for navigation particularly for vessels carrying hazardous cargoes, vessels with a draft of greater than 18 feet, and vessels delayed through due to uncontrollable external factors. The maritime community offered recommendations for changes that they believe will provide a reasonable balance between marine and land based transportation.

The Coast Guard has reviewed the additional bridge data supplied by VDOT. The information indicated that the test deviation reduced the amount of time the bridge opened for vessels. Between October 20, 2009, and December 30, 2009, there were approximately 85 vessel passages requiring 69 bridge openings. Most of these openings were provided for commercial vessels, with a maximum of four vessels transiting through a single bridge opening.

With an average of fewer than two openings per day (1.23) during the test deviation, VDOT contended that when bridge openings in 2009(during the test deviation) were compared to the same months in 2008 (before the test deviation) there was a 30 percent reduction in the total number of minutes the bridge was opened for vessels and the number of openings also decreased by 21 percent. In 2009, the Berkley Bridge averaged 97,135 vehicles per day.

VDOT, VMA and the local maritime facilities (VDOT/VMA) identified a need for mariners to have more access transiting through the Berkley Bridge. The parties recommended operating procedures for inclusion in the regulatory language. The recommended operating procedures and the Coast Guard responses are as follows:

1. The bridge is to open on signal at any time for vessels carrying hazardous cargo.

2. The bridge is to open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room.

VMA stated that certain vessels and conditions make safe bridge transits more difficult and dangerous. VMA/VDOT recommended establishing provisions that would exempt vessels from only transiting at the scheduled opening time.

The Coast Guard proposed the following: The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204; and for all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times: The draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control Room at (757) 494–2490.

3. If a vessel has made prior arrangements for a delayed opening, and there are vessels awaiting transit, the opening may be delayed if the master(s) of the waiting vessel(s) agree to a delayed opening to accommodate the delayed vessel. Otherwise the opening will accommodate the waiting vessel(s) only, and close upon their clearing the bridge.

VMA stated that communication between vessels is important to scheduling a single opening at the Berkley Bridge. The Coast Guard asserts that communication between vessels and the bridge tender should be coordinated to insure and maintain the safety of navigation. However, specific regulatory language controlling communication between vessels is unwarranted and not within the scope of drawbridge operating regulations.

4. An opening will be provided to a transiting vessel up to, but no more than, 30 minutes following the scheduled opening time provided the transiting vessel has communicated their estimated time of arrival to the Berkley Bridge tender prior to the scheduled opening time.

VMA stated that the timing of large vessel movements is affected by a number of uncontrollable and external factors. The effects of winds, currents, and tides have an important impact on safe navigation and those conditions.

In addition, VMA indicated that the current test deviation creates a situation whereby marine traffic will stack up while waiting for an opening, thus creating vessel congestion, a navigational hazard.

For these situations, the Coast Guard proposed the following: If the bridge is not opened during a particular scheduled opening per paragraph (d)(3)(ii) and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control Room at (757) 494–2490.

5. The bridge is to open at any time if, in the professional judgment of the vessel operator, the environmental or operating conditions compromise navigational safety.

The Coast Guard responded to this comment by indicating that under 33 CFR 117.31, "Drawbridge operations for

emergency vehicles and emergency vessels", paragraph (b)(2) adequately provides for unscheduled vessel openings of the bridge in the event of a marine emergency.

The supplemental proposed rule was also rephrased to integrate the restricted morning and evening rush hour times (from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m.) with the test deviation period from 9 a.m. to 3 p.m. The Coast Guard suggested the following paragraph: For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays.

Based on all of the comments received, the Coast Guard issued the SNPRM.

Discussion of Comments and Changes

The Coast Guard received four responses to the SNPRM and the second temporary deviation, two e-mails and one each by letter and to the Web site at *http://www.regulations.gov.*

VMA, who represents waterborne commerce in the Port of Hampton Roads, responded in writing with its support of the revised proposed regulation and its statement that the current operating regulation incorporates the minimum degree of flexibility that the maritime industry can accept. VDOT also indicated that the operating schedule in the temporary deviation and the revised proposed regulation has improved the flow of vehicular traffic while still meeting the minimum needs of navigation.

VMA, VDOT and two private citizens expressed concerns about unscheduled openings that caused vehicular traffic congestion. The unscheduled openings were provided for Government vessels, vessels with a draft of 18 feet or more that provided at least 6 hours advance notice and for vessels hauling dangerous cargo.

The Coast Guard reviewed the bridge data supplied by VDOT. The information indicated that during the deviation test period (from March 3, 2010 to July 1, 2010), that a total of 260 potential bridge openings for vessels could have been provided Monday through Friday, except Federal holidays, at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m. The data showed the bridge actually opened only 88 of the 260 potential openings. The data also revealed that seven bridge openings were provided approximately 15 minutes past the scheduled opening times of 9 a.m., 11 a.m. and 1 p.m. and that the average opening usually lasted 12 minutes; a later opening at 2:30 p.m. would add to the traffic congestion during the rush hour. A majority of these openings were provided for commercial vessels, with a maximum of four vessels transiting through a single bridge opening.

These subsequent changes to the operating procedures appear to have reduced vehicular traffic congestion while still providing for the reasonable needs of navigation. Based on the information provided, we will implement a final rule with no changes to the SNPRM.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can still plan their trips in accordance with the scheduled bridge openings, and to minimize delays, vessels that can pass under the bridge without a bridge opening may do so at all times.

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.

We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays and vessels that can pass under the bridge without a bridge opening may do so at all times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the SNPRM 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates 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 would not create an environmental risk to health or risk to safety that might 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. From September 4, 2010, to October 5, 2012, in § 117.1007, suspend paragraphs (b) and (c) and add new paragraph (d) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

* * * * *

(d) The draw of the Berkley Bridge, mile 0.4, at Norfolk, shall operate as follows:

(1) The draw shall remain closed one hour prior to the published start of a scheduled marine event regulated under Sec. 100.501, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under Sec. 100.501 allows the bridge to open for commercial vessel traffic.

(2) The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204.

(3) For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall:

(i) Open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494–2490.

(ii) Open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.

(4) If the bridge is not opened during a particular scheduled opening per paragraph (d)(3)(ii) of this section and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494–2490.

Dated: July 23, 2010.

William D. Lee,

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

[FR Doc. 2010–19518 Filed 8–5–10; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008–8]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Final Rule; correction.

SUMMARY: The Copyright Office makes a nonsubstantial correction to its regulation announcing the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of copyrighted works.

EFFECTIVE DATE: August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Assistant General Counsel, and David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, D.C. 20024.

Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office makes a non–substantive correcting amendment to the final rule governing exemption to prohibition on circumvention of copyright protection systems for access control technologies which was published July 27, 2010.

List of Subjects in 37 CFR 201

Copyright, Exemptions to prohibition against circumvention.

Correction

For the reason set forth in the preamble, 37 CFR part 201 is corrected by making the following technical amendment:

PART 201–GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702

■ 2. Amend § 201.40 (b) introductory text by removing the word "five".

Dated: July 28, 2010

Marybeth Peters,

Register of Copyrights.

[FR Doc. 2010–19007 Filed 8–5–10; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0190; FRL–8836–8]

Pymetrozine; Regulation Denying NRDC's Objections on Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Regulation.

SUMMARY: In this regulation, EPA again denies objections by the Natural Resources Defense Council (NRDC) to an action establishing tolerance regulations for the pesticide pymetrozine under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA's previous denial of NRDC's objections, published in the **Federal Register** on August 10, 2005, was remanded to EPA by the U.S. Court of Appeals, Ninth Circuit, for further explanation of EPA's decision on the application of the FFDCA's requirement concerning an additional tenfold safety factor for the protection of infants and children to these pesticide tolerances. In the challenged action, EPA had applied a reduced additional safety factor to several risk assessments for pymetrozine. EPA has reviewed its decision on the children's safety factor in light of the current data on pymetrozine and now determined that the full additional children's safety factor should be applied in assessing the risk of the pymetrozine tolerances. However, EPA still denies NRDC's objections because the increase in the children's safety factor does not change EPA's conclusion that the tolerances are safe. EPA's explanation for its decisions on the children's safety factor and the safety of pymetrozine tolerances are included in this regulation.

DATES: This regulation is effective August 6, 2010. Objections and requests for hearings must be received on or before October 5, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0190. To access the electronic docket, go to *http://www.regulations.gov*, and search for the docket number. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Meredith Laws, Registration Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 304–7038; e-mail address: *laws.meredith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

In this document EPA denies objections by the NRDC to EPA's establishment of certain pesticide tolerances. This action may also be of interest to agricultural producers, food manufacturers, or pesticide manufacturers. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS) code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection

or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0190 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk as required by 40 CFR part 178 on or before October 5, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2005–0190, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Introduction

A. What Action Is the Agency Taking?

This action is being taken in response to a remand to EPA of a final order denying objections filed by the NRDC to regulations establishing pesticide tolerances for pymetrozine under section 408 of the FFDCA, 21 U.S.C. 346a. (70 FR 46706, August 10, 2005); (Ref. 1). The order was remanded to EPA by the U.S. Court of Appeals, Ninth Circuit, for an explanation of the basis for EPA's decision on the FFDCA's provision requiring a presumptive additional tenfold (10X) safety factor for the protection of infants and children. (*NCAP v. EPA*, 544 F.3d 1043, 1052 (9th Cir. 2008)). Specifically, the court held that EPA did not provide "enough information" on why in evaluating the risk of pymetrozine it chose to deviate from this presumptive safety factor. (Id.). In response to the remand, EPA is again denying the objections. In light of new data received on pymetrozine, EPA has now determined that the presumptive safety factor for infants and children should be retained; however, the objections are denied because retention of this additional safety factor does not show the pymetrozine tolerances to be unsafe.

Because EPA has taken new information into account in issuing this decision upon remand, EPA is issuing the remand decision as a regulation under FFDCA section 408(d)(4)(i). Any person may file objections to a FFDCA section 408(d)(4)(i) regulation with EPA and request a hearing on those objections. (Id.). If this decision was issued as a revised final order on NRDC's objections under FFDCA section 408(g)(2)(C), (21 U.S.C. 346a(g)(2)(C)), then any party who wished to contest EPA's determination would have no opportunity to submit factual contentions to the record concerning the new information prior to seeking judicial review.

B. What Is the Agency's Authority for Taking This Action?

EPA's authority for issuing pesticide tolerances is contained in FFDCA section 408(d) and the statutory provisions governing the administrative review process for tolerances is in FFDCA section 408(g)(2). (21 U.S.C. 346a(d) and (g)(2)).

III. Statutory and Regulatory Background

In this Unit, EPA provides background on the relevant statutes and regulations governing NRDC's objections as well as on pertinent Agency policies and practices. Unit III.A. summarizes the requirements and procedures in section 408 of the FFDCA and applicable regulations pertaining to pesticide tolerances. Unit III.B. provides an overview of EPA's risk assessment process. It contains an explanation of how EPA identifies the hazards posed by pesticides, how EPA determines the level of exposure to pesticides that pose a concern ("level of concern"), how EPA measures human exposure to pesticides, and how hazard, level of concern conclusions, and human exposure estimates are combined to evaluate risk. Further, this unit presents background information on the EPA's policy with regard to the statutory safety factor for the protection of infants and children.

A. FFDCA

1. *In general*. EPA establishes maximum residue limits, or "tolerances," for pesticide residues in food under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration and the U.S. Department of Agriculture (USDA). Section 408 was substantially rewritten by the Food Quality Protection Act of 1996 (FQPA), which added the provisions discussed below establishing a detailed safety standard for pesticides and additional protections for infants and children. (Public Law 104–170, 110 Stat. 1489 (1996)).

2. *Safety standard for pesticide tolerances*. A pesticide tolerance may only be promulgated by EPA if the tolerance is "safe." (21 U.S.C. 346a(b)(2)(A)(i)). "Safe" is defined by the statute to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." (21 U.S.C. 346a(b)(2)(A)(ii)). The statute explains that aggregate exposure to a pesticide includes "dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources." (21 U.S.C. 346a(b)(2)(D)(vi)).

In making the safety determination for a tolerance, risks to infants and children are given special consideration. Specifically, section 408(b)(2)(C) creates a presumptive additional safety factor for the protection of infants and children. It directs that "[i]n the case of threshold effects, ... an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children." (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to "use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children." (Id.). The additional safety margin for infants and children is referred to throughout this document as the "children's safety factor."

3. *Procedures for establishing, amending, or revoking tolerances*. Tolerances are established, amended, or revoked by rulemaking under the

unique procedural framework set forth in the FFDCA. Generally, a tolerance rulemaking is initiated by the party seeking to establish, amend, or revoke a tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing, amending, or revoking the tolerance, issue a proposed rule to do the same, or deny the petition. (21 U.S.C. 346a(d)(4)).

Once EPA takes final action on the petition by establishing, amending, or revoking the tolerance or denying the petition, any person may file objections with EPA and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). Objections and hearing requests must be filed within 60 days after date of publication in the **Federal Register**. (Id.). EPA's final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

B. EPA Risk Assessment for Tolerances – Policy and Practice

1. *The safety determination-risk assessment.* To assess risk of a pesticide tolerance, EPA combines information on pesticide toxicity with information regarding the route, magnitude, and duration of exposure to the pesticide. The risk assessment process involves four distinct steps:

- Identification of the toxicological hazards posed by a pesticide;
- Determination of the "level of concern" with respect to human exposure to the pesticide;
- Estimation of human exposure to the pesticide; and
- Characterization of the risk posed to humans by the pesticide based on comparison of human exposure to the level of concern.

a. *Hazard identification.* In evaluating toxicity or hazard, EPA reviews toxicity studies, primarily in laboratory animals, to identify any adverse effects on the test subjects. Animal studies typically involve investigating a broad range of endpoints including gross and microscopic effects on organs and tissues, functional effects on body organs and systems, effects on blood parameters (such as red blood cell count, hemoglobin concentration, hematocrit, and a measure of clotting potential), effects on the concentrations of normal blood chemicals (including glucose, total cholesterol, urea nitrogen, creatinine, total protein, total bilirubin, albumin, hormones, and enzymes such as alkaline phosphatase, alanine aminotransfersase and cholinesterases), and behavioral or other gross effects identified through clinical observation and measurement. EPA examines whether adverse effects are caused by either short-term (e.g., acute) or longer-term (e.g., chronic) pesticide exposure and the effects of pre-natal and post-natal exposure in animals.

EPA also considers whether the adverse effect has a threshold — a level below which exposure has no appreciable chance of causing the effect. For non-threshold effects, EPA assumes that any exposure to the substance increases the risk that the adverse effect may occur. At present, EPA only considers one adverse effect, the chronic effect of cancer, to potentially be a non-threshold effect. (Ref. 2 at 4–9). Not all carcinogens, however, pose a risk at any exposure level (i.e., "a non-threshold effect or risk"). Advances in the understanding of the mode of action of carcinogenesis have increasingly led EPA to conclude that some pesticides that cause carcinogenic effects in animal studies only cause such effects above a certain threshold of exposure.

b. *Level of concern/dose-response analysis.* Once a pesticide's potential hazards are identified, EPA determines a toxicological level of concern for evaluating the risk posed by human exposure to the pesticide. In this step of the risk assessment process, EPA essentially evaluates the levels of exposure to the pesticide at which effects might occur. An important aspect of this determination is assessing the relationship between exposure (dose) and response. The assessment of this relationship is often referred to as the dose-response analysis. EPA follows differing approaches to identifying a level of concern for threshold and non-threshold hazards.

i. *Threshold effects.* In examining the dose-response relationship for a pesticide's threshold effects, EPA evaluates an array of toxicity studies on the pesticide. In each of these studies, EPA attempts to identify the lowest observed adverse effect level (LOAEL) and the next lower dose at which there are no observed adverse effect levels (NOAEL). Generally, EPA will use the lowest NOAEL from the available studies as a starting point (called the Point of Departure) in estimating the level of concern for humans. (Ref. 2 at 9 (The Point of Departure "is simply the toxic dose that serves as the 'starting point' in extrapolating a risk to the human population.")). At times, however, EPA will use a LOAEL from a study as the Point of Departure when no NOAEL is identified in that study and the LOAEL is close to, or lower than, other relevant NOAELs. The Point of Departure is in turn used in choosing a level of concern. EPA will make separate determinations as to the Points of Departure, and correspondingly levels of concern, for both short and long exposure periods as well as for the different routes of exposure (oral, dermal, and inhalation).

In estimating and describing the level of concern, the Point of Departure is at times used differently depending on whether the risk assessment addresses dietary or non-dietary exposures. (Pymetrozine is not expected to result in any meaningful non-dietary exposure and thus risk assessment of non-dietary exposure is not further discussed in this document.) For dietary risks, EPA uses the Point of Departure to calculate an safe or acceptable level of exposure designated as the reference dose (RfD). The RfD is calculated by dividing the Point of Departure by applicable safety or uncertainty factors. Typically, EPA uses a baseline safety/uncertainty factor of 100X. That value includes a factor of ten (10X) where EPA is using data from laboratory animals to reflect potentially greater sensitivity in humans than animals and a factor of 10X to account for potential variations in sensitivity among members of the human population as well as other unknowns. Additional safety factors may be added to address data deficiencies or concerns raised by the existing data. Under the FQPA, an additional safety factor of 10X is presumptively applied to protect infants and children, unless reliable data support selection of a different factor. This FQPA additional safety factor largely replaces pre-FQPA EPA practice regarding additional safety factors. (Ref. 3 at 4–11).

In implementing FFDCA section 408, EPA's Office of Pesticide Programs, also calculates a variant of the RfD referred to as a Population Adjusted Dose (PAD). A PAD is the RfD divided by any portion of the FQPA safety factor that does not correspond to one of the traditional additional safety factors used in general Agency risk assessments. (Ref. 3 at 13–16). The reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408. Today, RfDs and PADs are generally calculated for both acute and chronic dietary risks although traditionally a RfD or PAD was only calculated for chronic dietary risks. Throughout this document general references to EPA's

calculated safe dose are denoted as a RfD/PAD.

ii. *Non-threshold effects*. For risk assessments for non-threshold effects, EPA does not use the RfD/PAD approach to choose a level of concern if quantification of the risk is deemed appropriate. Rather, EPA calculates the slope of the dose-response curve for the non-threshold effects from relevant studies using a linear, low-dose extrapolation model that assumes that any amount of exposure will lead to some degree of risk. This dose-response analysis will be used in the risk characterization stage to estimate the risk to humans of the non-threshold effect. Linear, low-dose extrapolation is typically used as the default approach for estimating the risk to carcinogens, unless there are mode of action data indicating a threshold response (or nonlinearity).

c. *Estimating human exposure*. Risk is a function of both hazard and exposure. Thus, equally important to the risk assessment process as determining the hazards posed by a pesticide and the toxicological level of concern for those hazards is estimating human exposure. Under FFDCA section 408, EPA is concerned not only with exposure to pesticide residues in food but also exposure resulting from pesticide contamination of drinking water supplies and from use of pesticides in the home or other non-occupational settings. (See 21 U.S.C. 346a(b)(2)(D)(vi)).

i. *Exposure from food*. There are two critical variables in estimating exposure in food: (1) The types and amount of food that is consumed; and (2) the residue level in that food. Consumption is estimated by EPA based on scientific surveys of individuals' food consumption in the United States conducted by the USDA. (Ref. 2 at 12). Information on residue values comes from a range of sources including crop field trials, data on pesticide reduction (or concentration) due to processing, cooking, and other practices, information on the extent of usage of the pesticide, and monitoring of the food supply. (Id. at 17).

In assessing exposure from pesticide residues in food, EPA, for efficiency's sake, follows a tiered approach in which it, in the first instance (i.e., Tier 1), assesses exposure using the worst case assumptions that 100 percent of the crops for which tolerances exist or are proposed are treated with the pesticide and 100 percent of the food from those crops contain pesticide residues at the tolerance level. (Id. at 11). When such an assessment shows no risks of concern, a more complex risk assessment is unnecessary. By avoiding a more complex risk assessment, EPA's resources are conserved and regulated parties are spared the cost of any additional studies that may be needed. If, however, a Tier 1 assessment suggests there could be a risk of concern, EPA then attempts to refine its exposure assumptions to yield a more realistic picture of residue values through use of data on the percent of the crop actually treated with the pesticide and data on the level of residues that may be present on the treated crop. These latter data are used to estimate what has been traditionally referred to by EPA as "anticipated residues." EPA refinement of an exposure assessment "can have dramatic effects on the level of exposure predicted, reducing worst case estimates by 1 or 2 orders of magnitude or more." (73 FR 42683, 42687, July 23, 2008). More information on how EPA refines estimates of exposure from pesticides in food can be found in the following EPA publication, "A User's Guide to Available EPA Information on Assessing Exposure to Pesticides in Food." (Ref. 2; see also 73 FR at 42687).

ii. *Exposure from water*. EPA may use either or both field monitoring data and mathematical water exposure models to generate pesticide exposure estimates in drinking water. Monitoring and modeling are both important tools for estimating pesticide concentrations in water and can provide different types of information. Monitoring data can provide estimates of pesticide concentrations in water that are representative of specific agricultural or residential pesticide practices and under environmental conditions associated with a sampling design. Although monitoring data can provide a direct measure of the concentration of a pesticide in water, it does not always provide a reliable estimate of exposure because sampling may not occur in areas with the highest pesticide use, and/or the sampling may not occur when the pesticides are being used.

In estimating pesticide exposure levels in drinking water, EPA most frequently uses mathematical water exposure models. EPA's models are based on extensive monitoring data and detailed information on soil properties, crop characteristics, and weather patterns. (69 FR 30042, 30054–30065 (May 26, 2004)). These models calculate estimated environmental concentrations of pesticides using laboratory data that describe how fast the pesticide breaks down to other chemicals and how it moves in the environment. These concentrations can be estimated continuously over long periods of time, and for places that are of most interest for any particular pesticide. Modeling is a useful tool for characterizing vulnerable sites, and can be used to estimate peak concentrations from infrequent, large storms.

Typically EPA uses a two-tiered approach to modeling pesticide concentrations in surface and ground water. The first tier model uses high-end and worst-case assumptions as a screen to identify pesticides that will not result in residues in water that pose a concern. If the first tier model suggests that pesticide levels in water may be unacceptably high, a more refined model is used as a second tier assessment. Second tier models substitute more detailed information for the high-end or worst-case assumptions used in first tier models. For example, a second tier model may incorporate information on the maximum percentage of acreage surrounding a drinking water reservoir that may be devoted to agriculture instead of assuming that 100 percent of the watershed is, in fact, farmland.

iii. *Residential exposures*. Generally, in assessing residential exposure to pesticides EPA relies on its Residential Standard Operating Procedures (SOPs). (Ref. 4). The SOPs establish models for estimating application and post-application exposures in a residential setting where pesticide-specific monitoring data are not available. SOPs have been developed for many common exposure scenarios including pesticide treatment of lawns, garden plants, trees, swimming pools, pets, and indoor surfaces including crack and crevice treatments. The SOPs are based on existing monitoring and survey data including information on activity patterns, particularly for children. Where available, EPA relies on pesticide-specific data in estimating residential exposures.

d. *Risk characterization.* The final step in the risk assessment is risk characterization. In this step, EPA combines information from the first three steps (hazard identification, level of concern/dose-response analysis, and human exposure assessment) to quantitatively estimate the risks posed by a pesticide. Separate characterizations of risk are conducted for different durations of exposure. Additionally, separate and, where appropriate, aggregate characterizations of risk are conducted for the different routes of exposure (dietary and non-dietary).

For threshold dietary risks, EPA typically estimates risk by expressing human exposure as a percentage of the RfD/PAD. Exposures lower than 100 percent of the RfD/PAD are generally

not of concern. Under current procedures, EPA aggregates pesticide exposure from food and drinking water prior to comparing exposure to the RfD/PAD.

2. *EPA policy on the children's safety factor.* As the above brief summary of EPA's risk assessment practice indicates, the use of safety factors plays a critical role in the process. This is true for the use of traditional 10X safety factors to account for potential differences between animals and humans when relying on studies in animals (inter-species safety factor) and potential differences among humans (intra-species safety factor) as well as the use of FQPA's additional 10X children's safety factor.

In applying the children's safety factor provision, EPA has interpreted it as imposing a presumption in favor of applying an additional 10X safety factor. (Ref. 3 at 4, 11). Thus, EPA generally refers to the additional 10X factor as a presumptive or default 10X factor. EPA has also made clear, however, that this presumption or default in favor of the additional 10X is only a presumption. The presumption can be overcome if reliable data demonstrate that a different factor is safe for children. (Id.). In determining whether a different factor is safe for children, EPA focuses on the three factors listed in section 408(b)(2)(C) — the completeness of the toxicity database, the completeness of the exposure database, and potential pre- and post-natal toxicity. In examining these factors, EPA strives to make sure that its choice of a safety factor, based on a weight-of-the-evidence evaluation, does not understate the risk to children. (Id. at 24–25, 35).

IV. Challenged Tolerance Regulation for Pymetrozine

1. *In general.* NRDC challenged a December 27, 2001, action establishing tolerances for pymetrozine on cotton seed; cotton gin byproducts; fruiting, cucurbit, leafy, and Brassica vegetables; turnip greens; hops; and pecans. (66 FR 66786, December 27, 2001). Given pymetrozine's exposure pattern and toxicological characteristics, EPA determined that pymetrozine potentially presented acute, short-term, chronic, and cancer risks and EPA quantitatively assessed these risks in making its safety determination. (Id. at 66791–66792). All of these risks were found to be below the Agency's level of concern. (Id.).

2. *Children's safety factor determination.* For pymetrozine, EPA concluded there was uncertainty regarding its effects on the young because a DNT was outstanding and a NOAEL had not been identified in an acute neurotoxicity study. (66 FR at 66791; 64 FR 52438, 52444, September 29, 1999). EPA determined, however, that these uncertainties were partially offset by a number of factors. First, EPA noted that there was no increased sensitivity in young animals observed in the pre- and post-natal studies conducted with pymetrozine, and that these studies showed no evidence of abnormalities in the fetal nervous system. (Ref. 5 at 5). Second, the evidence on pymetrozine's neurotoxicity was mixed. Although the acute neurotoxicity study had identified behavioral effects at 125 milligrams per kilogram of body weight per day (mg/kg bw/day), the subchronic neurotoxicity only showed "indefinite evidence" of neurotoxicity at significantly higher doses (201 mg/kg/day for males, 228 mg/kg/day for females). (Id. at 2). Third, exposure data were deemed adequate not to underestimate exposure. (Id. at 5). Weighing all of this evidence, EPA determined that the safety of infants and children would be protected by an additional 3X safety factor applied to all risk assessments; (66 FR at 55791) and a second additional 3X safety factor for assessing acute risks to the general population, including infants and children. The second additional safety factor was only applied to the acute assessment because it was only in an acute neurotoxicity study that a NOAEL had not been identified. (64 FR at 52444). Given the two 3X safety factors for acute risk, EPA essentially retained the full 10X FQPA safety factor for the acute risk assessment. The second additional 3X safety factor was not retained as to the acute assessment for women of child-bearing age because this assessment was based on an acute study in which a NOAEL was obtained. (Id.).

V. Subsequent Tolerance Action for Pymetrozine

Since December 2001, EPA has established an additional tolerance for pymetrozine on asparagus. (70 FR 43292, July 27, 2005). Because section 408 requires EPA, in setting a pesticide tolerance, to consider aggregate exposure to the pesticide, "including dietary exposure under . . . all other tolerances for the pesticide chemical residue," in this subsequent action EPA took into account exposure to pymetrozine under challenged tolerances established on December 27, 2001 (cotton seed; cotton gin byproducts; fruiting, cucurbit, leafy, and Brassica vegetables; turnip greens; hops; and pecans). In its action on the asparagus tolerance in 2005, EPA concluded that the additional exposure from the new tolerance, when aggregated with exposure under existing tolerances, was safe. (70 FR at 43297).

With regard to the children's safety factor in this subsequent action, EPA relied on a revised analysis taking into account its Children's Safety Factor Policy, which had not been released at the time of the December 27, 2001 tolerance action. This revised analysis focused on how the expected dose level in the requested DNT study compared to the existing Points of Departure for acute and chronic risks. The dose levels in the DNT study are generally guided by the results of the two-generation study in rats because it is a study involving the young and is conducted in the same species as the DNT study. Noting that the Points of Departure for acute risk were generally in the same order of magnitude of the NOAEL in the reproduction study, EPA concluded that full additional 10X safety factor should be retained for acute risk assessments because the DNT study could potentially lower the existing Point of Departure significantly and thus EPA lacked reliable data to choose a factor other than the default value. EPA reasoned that if the DNT study showed adverse effects at the lowest dose tested (presumably a dose in the range of the current Point of Departure), then a revised Point of Departure would be tenfold lower than the existing Point of Departure once EPA compensated for a lack of NOAEL in the DNT study. The opposite conclusion was reached for chronic risks because the Point of Departure for chronic risk assessment was already 30X lower than the expected low dose in the DNT study. Due to this significant difference in the chronic Point of Departure and the expected low dose in the DNT study, the results of the DNT study were unlikely to affect the chronic Point of Departure and thus an additional safety factor was not needed to protect infants and children in the absence of the DNT study. (Ref. 6).

VI. Summary of NRDC Objections, Administrative Review of the Objections, and Judicial Review of EPA's Order Denying the Objections

A. NRDC's Objections

On four occasions in the first half of 2002, the NRDC and various other parties filed objections with EPA to final rules under section 408 of the FFDCA, (21 U.S.C. 346a), establishing pesticide tolerances for various pesticides. The objections applied to 14 pesticides and 112 separate pesticide tolerances. The challenged tolerances included the tolerances for pymetrozine addressed in

today's regulation. The objections to the pymetrozine tolerances were filed on February 25, 2002, and grouped with objections to tolerances for halosulfuron-methyl.

Although NRDC's petitions raised dozens of issues, most of the issues related to two main claims: (1) That EPA had not properly applied the additional 10X safety factor for the protection of infants and children in section 408(b)(2)(C); and (2) that EPA had not accurately assessed the aggregate exposure of farm children to pesticide residues. Many of the issues were not fact-specific to the challenged tolerances but rather represented a generic challenge to EPA's implementation of the FQPA.

Two specific issues raised by NRDC are worthy of greater description because they later figured in the judicial review of EPA's disposition of the objections. First, as to several of the pesticides, NRDC argued that EPA had unlawfully removed the 10X children's safety factor because EPA had required that a DNT study be submitted for the pesticides but such study had not yet been completed. Specifically as to pymetrozine, NRDC asserted that:

> Even though . . . DNT results are required and overdue, EPA has established new tolerances for pymetrozine. In doing so, EPA failed to apply the required 10X safety factor for children that is intended to compensate for just such data gaps.

(Ref. 1 at 4). Second, NRDC argued that EPA could not lawfully remove the children's safety factor as to all of the challenged pesticides because EPA relied on drinking water exposure models to estimate pesticide exposure levels in water instead of "collect[ing] pesticide-specific data on water-based exposure." (Ref. 7 at 5; Ref. 8 at 6). According to NRDC, drinking water models, as a definitional matter, could not supply the "reliable data" needed to choose a children's safety factor differing from the presumptive value. (Ref. 7 at 4–6; Ref. 8 at 6).

B. EPA's Denial of the Objections

EPA denied NRDC's objections in two separate orders. The first was issued on May 26, 2004, and addressed only the tolerances for imidacloprid. (69 FR 30042, May 26, 2004). The second was released on August 10, 2005 and addressed the tolerances for the remaining 14 pesticides. (70 FR 46706, August 10, 2005). The second order relied heavily on the imidacloprid order because in the process of resolving the claims pertaining to imidacloprid, EPA resolved many of NRDC's generic attacks on EPA's interpretation of the FQPA. (70 FR at 46711, 46716, 46725, 46726, 46730).

As to the DNT study and the children's safety factor, EPA rejected "NRDC's contention that an EPA finding that a DNT study is needed in evaluating the risks posed by the pesticide is outcome-determinative as regards to retaining the children's safety factor until such time as the DNT study is submitted and reviewed." (70 FR at 46724). EPA carefully reviewed all of the evidence cited by NRDC regarding the DNT study and concluded that NRDC had not shown that the DNT was so critical to the protection of children that in the absence of that study EPA was conclusively precluded from exercising its statutory authority to make a case-by-case determination regarding the appropriate children's safety factor. EPA specifically did not address the specific factual considerations relating to its individual children's safety factor decisions as to pymetrozine (and the other pesticides), noting that "NRDC has offered no pesticide-specific arguments as to the pesticides in this proceeding as to why the absence of a DNT study requires the retention of the default 10X additional factor." (Id.)

With regard to whether reliance on drinking water models precluded lowering of the children's safety factor, EPA exhaustively reviewed the underlying factual basis for its models, the scientific peer review they had received, and how the models had worked in practice. EPA concluded that "they are based on reliable data and have produced estimates that EPA can reliably conclude will not underestimate exposure to pesticides in drinking water." (70 FR at 46726). Accordingly, NRDC's claim that only actual pesticide-specific water monitoring data could provide "reliable data" on the levels of pesticides in drinking water was rejected.

C. Judicial Review

1. *NRDC's petition for review.* In August, 2005, NRDC and the Northwest Coalition for Alternatives to Pesticides (NCAP) filed petitions for review of EPA's August 10, 2005 order. NRDC had not challenged the May 26, 2004 imidacloprid order. The petitions were filed in the Second and Ninth Circuits and the matter was assigned to the Ninth Circuit. The consolidated petitions sought review as to EPA's denial of NRDC's objections as they pertained to the tolerances of the following seven pesticides: acetamiprid, fenhexamid, halosulfuron-methyl, isoxadifen-ethyl, mepiquat, pymetrozine, and zeta-cypermethrin.

NRDC/NCAP's brief argued that EPA had unlawfully removed or lowered the children's safety factor as to these seven pesticides and that EPA's establishment of tolerances for the seven pesticides was arbitrary and capricious. (Ref. 9). As to the contentions regarding the children's safety factor, NRDC/NCAP made several independent claims as to why EPA's action was unlawful. These claims were:

> a. As to acetamiprid, halosulfuron-methyl, mepiquat, pymetrozine, and zeta-cypermethrin, EPA had no discretion to alter the children's safety factor because it had determined that a DNT study was specifically needed to address concerns regarding these pesticides (DNT studies were not required on fenhexamid and isoxadifen-ethyl);
> b. EPA's decision on the children's safety factor could not be upheld because EPA provided "no pesticide-specific response to NRDC's objections with respect to the missing DNT studies, and does not offer any explanation or justification for the agency's departure from the tenfold children's safety factor for these five pesticides;"
> c. EPA lacked the reliable data on pesticide exposure levels in drinking water for each of the pesticides and such data are necessary to justify altering the children's safety factor; and
> d. EPA must retain the children's safety factor for each of the pesticides because data showed that they resulted in pre- or post-natal toxicity.

NRDC/NCAP argued that EPA's decision was arbitrary and capricious because EPA determined that additional data were needed on the pesticides but had not waited for submission of that data before establishing the pesticide tolerances and because EPA had not offered a sufficient explanation of its decisions on the children's safety factor.

2. *The Ninth Circuit's decision.* On September 19, 2008, the Ninth Circuit unanimously determined that:

> a. It was not arbitrary and capricious for EPA to have established the tolerances for acetamiprid, mepiquat, and pymetrozine without waiting for DNT studies for these pesticides;
> b. EPA had offered a reasoned explanation for why, as a general matter, the children's safety factor could be reduced in the absence of a DNT study; and
> c. It was reasonable for EPA to rely

in drinking water models in estimating pesticide levels in water in making children's safety factor determinations.

(*NCAP v. EPA*, 544 F.3d 1043, 1044–1051 (9th Cir. 2008)). Additionally, by a 2-to-1 vote, the court remanded to EPA its decision on the children's safety factor for acetamiprid, mepiquat, and pymetrozine. The majority found that EPA's order on NRDC's objections had not adequately explained the pesticide-specific reasons for removing or reducing the children's safety factor as to these pesticides in the absence of a required DNT study. (Id. at 1052). Without elaborating, the court dismissed all other issues raised by NRDC/NCAP. (Id. at 1053).

Although NRDC/NCAP's petition for review concerned seven pesticides, the court only remanded to EPA the tolerance decisions on acetamiprid, mepiquat, and pymetrozine. The petition for review was denied as to the other four pesticides because the remand only pertained to pesticides for which there was a question concerning EPA's pesticide-specific choice of a children's safety factor in the absence of a required DNT study. As to fenhexamid and isoxadifen-ethyl, a DNT study had not been required by EPA. For halosulfuron-methyl and zeta-cypermethrin tolerances, a DNT study had been required and had not been submitted at the time of the tolerance action; however, by the time of the oral argument, the circumstances had changed. As to zeta-cypermethrin, the DNT study had been submitted and reviewed by EPA and EPA had established further tolerances in reliance on the DNT study. As to halosulfuron-methyl, EPA had withdrawn the requirement for a DNT study. EPA notified the court that there was no longer a live controversy as to the tolerances for halosulfuron-methyl and zeta-cypermethrin and NRDC/NCAP and the court agreed the petition was moot as to these pesticides. (544 F.3d at 1048 n.4; Refs. 10 and 11).

VII. Revised Regulation on Remand

On remand, EPA has determined that NRDC's objections should again be denied because the remanded objections do not show that the pymetrozine tolerances are not safe. EPA has now received and reviewed a DNT study on pymetrozine. The results of the DNT study, when considered in combination with the rest of the pymetrozine database, convince EPA that the 10X children's safety factor should be retained for pymetrozine. EPA evaluated the risk of pymetrozine, taking into account the additional 10X children's safety factor and has concluded that pymetrozine tolerances are safe. A summary of EPA's reasons for retaining the 10X children's safety factor and of EPA's risk assessment is provided below.

A. DNT Study for Pymetrozine

A DNT study with pymetrozine was performed in Wistar-derived rats. (Ref. 12). Dose levels in the study were 0 (control), 100, 500, or 2,500 parts per million (ppm). To translate these doses to humans they are expressed in terms of the daily dose in milligrams of pymetrozine per kilogram of body weight of the experimental animals. Additionally, because of significant body weight changes between fetuses during the period of gestation and post-natal animals during lactation, that weight change is incorporated into the expression of dose by using separate dose calculations for gestation and lactation. Expressed in these terms, the doses in the pymetrozine DNT study were 0/0 (gestation/lactation), 8.1/16.8, 38.7/82.6, and 173.1 milligrams/kilogram of body weight/day (mg/kg/day). No dose is provided for the high dose group of lactation animals because higher than expected mortality was observed during littering, resulting in an insufficient number of litters. Therefore, the study was terminated for the high dose group prior to lactation.

Effects in pups, as well as maternal animals, were evaluated through both in-life and post-mortem observations. To investigate potential neurotoxic effects, the in-life observations included monitoring of motor activity, testing of acoustic startle response, learning and memory evaluation, and use of a functional observation battery (FOB). The FOB is a noninvasive procedure designed to detect gross functional deficits resulting from exposure to chemicals and to better quantify neurotoxic effects detected in other studies. The FOB consists of six types of observations: home cage, handling, open field, sensory, neuromuscular, and physiological responses. Post-mortem evaluation included examination of the major portions of the central and peripheral nervous system for any sign of neuropathology.

The primary effect seen in the maternal animals was loss of the litter. At the 38.7 mg/kg/day dose, total litter loss was experienced between birth and post-natal-day 5 by 5 out of 29 treated maternal animals (17.2%) compared to 2 out of 30 controls (6.7%). On gestation day 24, one maternal animal with staining around the nose was sacrificed due to difficult parturition, and another animal was pale. Food consumption was decreased (↓21%; statistical significance of $p \leq 0.01$) during lactation days 1–5. However, body weights at this dose were comparable to controls throughout treatment. At the 8.1/16.8 mg/kg/day dose, no treatment-related effects were seen on litter loss, survival, clinical signs, body weight, body weight gain, food consumption, or reproductive performances. EPA determined that the maternal LOAEL is 38.7 mg/kg/day and the maternal NOAEL is 8.1 mg/kg/day.

Pymetrozine caused a dose-dependent increase in the number of pups dying during post-natal-days 1–5; 57 pups at 8.1/16.8 mg/kg/day, 95 pups at 38.7/82.6 mg/kg/day, and 151 pups at 173.1 mg/kg/day, compared to 48 pups in the controls. This was due to the increase in the number of whole litter losses at 8.1/16.8 mg/kg/day (3 litters), 38.7/82.6 mg/kg/day (5 litters), and 173.1 mg/kg/day (4 litters) compared to controls (2 litters). When whole litter losses are excluded, no treatment-related findings were observed on litter size or viability.

Treatment had no adverse effects on pup body weight, body weight gain, food consumption, developmental landmarks, clinical signs, FOB, motor activity, auditory startle reflex, learning and memory, or brain weights. However, measurement of brain morphometry showed the following differences ($p \leq 0.05$) from controls: (i) Increased thickness of the corpus callosum in the 38.7/82.6 mg/kg/day males on post-natal-day 12 (↑15%) and in the 8.1/16.8 mg/kg/day males on post-natal-day 63 (↑4–13%); (ii) increased thickness of the inner granular and molecular layers of the pre-pyramidal fissure in the cerebellum in the 38.7/82.6 mg/kg/day males on post-natal-day 63 (↑4–19%); and (iii) increased thickness of the dorsal cortex in the 8.1/16.8 mg/kg/day females on post-natal-day 12 (↑4–10%).

EPA determined that the offspring LOAEL is 8.1 mg/kg/day, the lowest dose tested, based on morphometric changes in the brains of female pups on post-natal-day 12 and male pups on post-natal-day 63. The offspring NOAEL was not established.

B. Children's Safety Factor Decision for Pymetrozine

In evaluating the children's safety factor for pymetrozine, EPA considered the completeness of the toxicity and exposure databases as well as the potential for pymetrozine to cause pre- or post-natal toxicity, particularly where such toxicity indicates increased sensitivity in juvenile animals compared to adult animals. (Ref. 13)

1. *Toxicity database*. With the receipt of the DNT study, the toxicity database

for pymetrozine is complete in terms of the requirements in place at the time of the challenged pymetrozine tolerance action in 2001. However, since that time, EPA has amended data requirements pertaining to registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, (7 U.S.C. 136 et seq.), and establishment of tolerances under the FFDCA. (72 FR 60934, October 26, 2007). Several new requirements apply to agricultural pesticides such as pymetrozine but the only new data requirement for pymetrozine that has not yet been fulfilled is the requirement for an immunotoxicity study.

In the absence of this study, EPA examined the pymetrozine database to evaluate pymetrozine's immunotoxic potential. EPA concluded that the liver is the primary target organ of pymetrozine and that apparent immunotoxic effects are the result of exceedingly high doses.

Potential immune organ effects include atrophy of the thymus in the subchronic rat and dog studies at 360 and 54 mg/kg/day, respectively; decreased thymus weight in the chronic mouse study at 675 mg/kg/day; increased leucocytes in the subchronic rat study at 360 mg/kg/day; and hyperplasia of the splenic lymphocyte follicles in the reproduction study at 136.9 mg/kg/day. Clear NOAELs were identified for these potential immunotoxic effects at higher doses than the endpoint that was selected for risk assessment, i.e., the 8.1 mg/kg/day LOAEL from the DNT study based on brain morphometric changes in the offspring. Lymphocytic infiltration in the prostrate and thyroid was observed at 14 mg/kg/day in the subchronic dog study but these organs are not a primary part of the immune system and the lymphocytic infiltration is considered an immune system reaction to other toxic effects on these organs and not an immunotoxic effect.

The Agency does not believe that conducting a functional immunotoxicity study will result in a lower Point of Departure than the endpoint currently selected for overall risk assessment (i.e. the extrapolated NOAEL from the DNT study—see discussion below in Unit VII.C.1.a.) based on:

a. The only potential immunotoxic responses occurred at doses greater than the endpoint selected for risk assessment,

b. Clear NOAELs were identified for the potential immunotoxic effects, again at doses greater the endpoint selected for risk assessment; and

c. The lymphohistocytic effects were determined not to be immunotoxic effects but a reaction to other toxic effects.

The other concern with the toxicity database is that a NOAEL was not identified for juvenile animals in the DNT study. The LOAEL in that study was based on differences from controls in the measurement of brain morphometrics. The concern with this effect, however, is lessened somewhat here in that no effects were seen in other barometers of effects on developmental neurology such as developmental landmarks, clinical signs, FOB, motor activity, auditory startle reflex, learning and memory, or brain weights.

2. *Potential pre- and post-natal toxicity*. No indications of qualitative or quantitative sensitivity in the young were seen in the developmental studies in rats and rabbits or in the two generation reproduction study in rats. NOAELs were identified for all effects in the young seen in these studies. On the other hand, EPA has assumed that quantitative sensitivity was detected in the DNT study in rats given that toxicity was observed in the juveniles (brain morphometric changes) in the absence of maternal toxicity. This is a conservative assumption on EPA's part in that the maternal animals' brains were not examined for morphometric changes.

3. *Exposure database*. EPA's exposure estimate is based mainly on a 2005 exposure assessment performed for the last pymetrozine tolerance action. (70 FR 43292, July 27, 2005). For the acute exposure assessment, EPA used the very conservative approach of assuming pymetrozine was used on all foods with a tolerance and residues were at the tolerance level. The chronic exposure assessment is more refined in that for most crops EPA relied on average values from pesticide residue field trials for all commodities and data on the percentage of crops that are treated with pymetrozine for most of the more heavily-consumed commodities. Because several years have passed since the 2005 pymetrozine tolerance action, EPA updated the percent crop treated data in assessing exposure. Although pymetrozine is licensed for use on ornamentals, EPA expects exposure to the public, including children, from this use to be negligible because pymetrozine may only be applied by commercial applicators (hence, no applicator exposure for the public) and post-application contact with ornamentals is infrequent and brief compared with, for example, turf.

4. *Conclusion*. The primary factor of concern from the above is the weakness in the toxicity database due to the failure to identify a NOAEL in the DNT study. This deficiency is heightened by the fact that, although pre- and post-natal animals were generally not more sensitive than adults, the DNT study showed quantitative sensitivity in rat pups due to the identification of adverse brain morphometric changes in rat pups at a dose that did not cause maternal toxicity. Although the brain morphometric effects seen at the LOAEL in the DNT study were not confirmed by other barometers of developmental neurotoxicity, the absence of a NOAEL for these effects creates sufficient uncertainty that reliable data are not available to revise the default 10X children's safety factor. Therefore, EPA is retaining the full 10X children's safety factor in assessing risk based on the DNT study. As discussed in Unit VII.C.1. below, the DNT study provides the Point of Departure for both acute and chronic risk assessments. Retention of the full children's safety factor reduces any concerns from lack of an immunotoxicity study as the NOAELs from the potential immunotoxic organ effects are all greater than 1000X higher than the level of concern (aPAD and cPAD) when the 10X children's safety factor is taken into account. Despite the lack of a NOAEL in the DNT study and the increased sensitivity in juveniles shown in that study, EPA does not believe that the weight of the evidence supports an additional safety factor higher than 10X given that the brain morphometric effects seen at the LOAEL in the DNT study were not confirmed by any other measures of neurological effect.

C. Risk Assessment and Safety Determination for Pymetrozine

Given the new data on developmental neurotoxicity and EPA's revised children's safety factor determination, EPA has recalculated the risks of pymetrozine taking this information into account. EPA last assessed the risks of pymetrozine in connection with a tolerance rulemaking for pymetrozine on asparagus in 2005. (70 FR 43292, July 27, 2005). The new information affects the hazard identification and dose-response aspects of the risk assessment for acute and chronic non-cancer risk. EPA has also updated the exposure assessment performed for the 2005 assessment because exposure information is needed in completing a revised acute and chronic risk assessment.

1. *Hazard identification/dose response*—a. *Point of Departure.* As previously explained, EPA chooses a Point of Departure from toxicology studies for use in calculating a safe level of exposure to humans. This safe level

of exposure is called a Reference Dose (RfD) or Population-Adjusted Dose (PAD). In the 2002 tolerance rulemaking, EPA used the following Points of Departure: for acute risk to the general population (including infants and children) a LOAEL of 125 mg/kg/day from the acute neurotoxicity study in rats; for acute risk to pre-natal infants (focusing on exposure to females of child-bearing age) a NOAEL of 10 mg/kg/day from the rabbit developmental study; and for chronic risk to the general population (including infants and children) a NOAEL of 0.377 from the chronic toxicity study in rats. The same Points of Departure were used in risk assessment for the 2005 rulemaking.

The Points of Departure have been changed based on a review of the DNT study. EPA determined that the LOAEL of 8.1 mg/kg/day from the DNT study (no NOAEL was established) would be used as the Point of Departure for both acute risk (all population groups including infants and children and women of child-bearing age) and chronic risk (again, all population groups). As described above, the effect seen at the LOAEL was changes in brain morphometrics in the offspring. The LOAEL from the DNT study was chosen for the Point of Departure for assessing acute risk because it is lower than either of the two doses previously used (the LOAEL from the acute neurotoxicity study and the NOAEL from the rabbit developmental study). Selection of this LOAEL for the Point of Departure for acute risk assessment is conservative because the brain morphometric changes were observed in the absence of impacts on other parameters, including developmental landmarks, clinical signs, FOB, motor activity, acoustic startle response, learning and memory, or brain weight. It is additionally conservative because EPA has assumed that these brain changes could occur from a single dose.

The Agency is using the LOAEL from the DNT study as the Point of Departure for chronic risk because brain morphometric changes may be the result of single or multiple doses and this LOAEL produces the most protective cPAD. Previously, EPA used the NOAEL from the chronic rat study as the Point of Departure but the LOAEL from that study is based on hepatic hypertrophy and EPA no longer considers hepatic hypertrophy in the absence of liver pathology or changes in relevant clinical chemistry parameters to be an adverse effect. Hepatocellular hypertrophy is often an adaptive and reversible effect in response to the presence of a chemical (i.e. induction of microsomal enzymes in the liver). Although there are other NOAELs in the pymtrozine database at or slightly below the LOAEL from the DNT study, once an additional safety factor (see above) is retained to address the lack of a NOAEL in the DNT study, reliance on the LOAEL from this study produces the most protective cPAD.

b. *Dose response.* To calculate both the aPAD and cPAD, EPA divided the LOAEL from the DNT study by 1,000, representing a 10X factor to account for inter-species variability, a 10X factor to account for intra-species variability, and an additional 10X safety factor for the protection of infants and children due to the lack of a NOAEL in the DNT study. As noted above, the retention of the full 10X children's safety factor is conservative given the fact that the brain morphometric changes were noted in the absence of any confirming clinical or neuropathological signs.

2. *Exposure.* As explained in Unit VII.B. above, EPA relied on the exposure assessment for the 2005 pymetrozine tolerance rulemaking updated to incorporate more recent percent crop treated information. Residue levels in drinking water were estimated for that exposure assessment based upon EPA's screening level drinking water models. This assessment is very conservative with regard to acute exposure, and, while more refined for chronic exposure, still retains significant conservatisms. (Refs. 13 and 14).

3. *Safety Determination.* Table 1 below shows how exposure to pymetrozine residues in food and drinking water compared to the aPAD and cPAD for the general population and major population subgroups based on age. The highest subgroups for acute and chronic exposure are shown in bold.

TABLE 1—SUMMARY OF COMBINED DIETARY (FOOD + DRINKING WATER) EXPOSURE AND RISK ESTIMATES FOR PYMETROZINE

Population Subgroup	Acute (95th Percentile)		Chronic	
	Exposure (mg/kg/day)	% aPAD	Exposure(mg/kg/day)	% cPAD
General U.S. Population	0.002831	35	0.000237	2.9
All Infants (1 year old)	0.003882	48	0.000707	**8.7**
Children 1–2 years old	0.004368	**54**	0.000350	4.3
Children 3–5 years old	0.004034	50	0.000329	4.1
Children 4–12 years old	0.003027	37	0.000224	2.8
Youth 13–19 years old	0.002312	28	0.000174	2.2
Adults 24–49 years old	0.002698	33	0.000222	2.7
Adults 50+ years old	0.002669	33	0.000235	2.9
Females 13–49 years old	0.002625	32	0.000217	2.7

Given the data and analysis underlying the derivation of the pymetrozine aPAD and cPAD and the pymetrozine exposure assessment, EPA concludes that its finding that exposure for the highest exposed population subgroup is below the aPAD and cPAD shows that there is a reasonable certainty of no harm from aggregate exposure to pymetrozine for all population subgroups including infants and children. (Refs. 13 and 14).

D. Conclusion

Because EPA's revised risk assessment – which incorporates both the DNT study and the 10X children's safety factor – shows pymetrozine exposure to be safe, NRDC's objection to the establishment of the pymterozine tolerances is denied.

VIII. Regulatory Assessment Requirements

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

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

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

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

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. Here, the underlying rule establishing pymetrozine tolerances is currently in effect. (See 66 FR 66786, December 27, 2001). The EPA order denying objections to that rule, however, has been remanded to EPA for a further explanation of the basis for EPA's decision on the objections. Importantly, the court remanded the matter to EPA without vacating the underlying rule. Today's action reaffirming the prior rule responds to the judicial remand and does not affect the status of the underlying rule. EPA will submit a report containing today's action reaffirming the pymetrozine tolerance regulation and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. The reaffirmed pymetrozine tolerance regulation is not a "major rule" as defined by 5 U.S.C. 804(2).

X. References

1. Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Halosulfuron-methyl and Pymetrozine Tolerances (filed February 25, 2002).

2. USEPA, A User's Guide to Available EPA Information on Assessing Exposure to Pesticides in Food (June 21, 2000).

3. Office of Pesticide Programs, USEPA, Office of Pesticide Programs' Policy on the Determination of the Appropriate FQPA Safety Factor(s) For Use in the Tolerance Setting Process (February 28, 2002).

4. Office of Pesticide Programs, USEPA, Standard Operating Procedures (SOPs) for Residential Exposure Assessments (Draft December 19, 1997).

5. Office Of Prevention, Pesticides and Toxic Substances, USEPA, Memorandum from Brenda Tarplee to Michael Doherty, Pymetrozine - Report of the FQPA Safety Factor Committee (July 21, 1999).

6. Office Of Prevention, Pesticides and Toxic Substances, USEPA, Memorandum from Brenda Tarplee to Michael Doherty, Pymetrozine - 3rd Report of the Hazard Identification Assessment Review Committee (February 9, 2003).

7. NRDC, Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Isoxadifen-ethyl, Acetamiprid, Propiconazole, Furilazole, Fenhexamid, and Fluazinam Tolerances (filed May 20, 2002).

8. NRDC, Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Imidacloprid, Mepiquat, Bifenazate, Zeta-cypermethrin, and Diflubenzuron Tolerances (filed March 19, 2002).

9. Petitioners' Brief, *NCAP v. EPA*, Case Nos. 75255, 76807 (9th Cir. March 6, 2006).

10. Letter from Kent E. Hanson, U.S. Department of Justice to Cathy Catterson, Clerk of the Court, United States Court of Appeals, Ninth Circuit, Notice of Supplemental Authority in *Northwest Coalition for Alternatives to Pesticides v. EPA*, Nos. 04–75255 & 04–76807 (May 25, 2007).

11. Letter from Aaron Colangelo, U.S. Department of Justice to Cathy Catterson, Clerk of the Court, United States Court of Appeals, Ninth Circuit, Response to EPA's Notice of Supplemental Authority in *Northwest Coalition for Alternatives to Pesticides v. EPA*, Nos. 04–75255 & 04–76807 (May 29, 2007).

12. Office Of Prevention, Pesticides and Toxic Substances, USEPA, Memorandum from Robert J. Mitkus to Daniel Peacock, Pymetrozine – Review of Developmental Neurotoxicity Study in Rats (July 13, 2005).

13. Office Of Prevention, Pesticides and Toxic Substances, USEPA, Memorandum from Christina Swartz to Daniel B. Peacock and Meredith F. Laws, Pymetrozine. Updated Aggregate Human Health Risk Assessment (April 2, 2010).

14. Office Of Prevention, Pesticides and Toxic Substances, USEPA, Memorandum from Christina Swartz to Daniel B. Peacock and Meredith F.

Laws, Pymetrozine – Acute, Chronic and Cancer Combined Dietary (Food + Drinking Water) Exposure and Risk Assessments (April 2, 2010).

List of Subjects in 40 CFR Part 180

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

Dated: July 27, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2010–19423 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0190; FRL–8836–7]

Acetamiprid, Mepiquat; Order Denying NRDC's Objections on Remand: Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final order.

SUMMARY: In this order, EPA again denies objections by the Natural Resources Defense Council (NRDC) to actions establishing tolerance regulations for the pesticides acetamiprid and mepiquat under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA's previous denial of NRDC's objections, published in the **Federal Register** on August 10, 2005, was remanded to EPA by the U.S. Court of Appeals, Ninth Circuit, for further explanation of EPA's decision on the application of the FFDCA's requirement concerning an additional safety factor for the protection of infants and children to these pesticide tolerances. On remand, EPA is denying NRDC's objections because the objections are now either moot or not sufficient to justify the relief requested.

DATES: This order is effective August 6, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0190. To access the electronic docket, go to *http://www.regulations.gov*, and search for the docket number. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Meredith Laws, Registration Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7038; e-mail address: *laws.meredith@epa.gov*.

SUPPLEMENTARY INFORMATION:.

I. General Information

A. Does this Action Apply to Me?

In this document EPA denies objections by the Natural Resources Defense Council ("NRDC") to EPA's to establishment of certain pesticide tolerances. This action may also be of interest to agricultural producers, food manufacturers, or pesticide manufacturers. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

II. Introduction

A. What Action Is the Agency Taking?

In this order, EPA denies objections filed by the NRDC to regulations establishing pesticide tolerances for acetamiprid and mepiquat under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA previously denied NRDC's objections in an order dated August 10, 2005. (70 FR 46706 (August 10, 2005)). NRDC sought judicial review of the August, 2005 order, and the U.S. Court of Appeals, Ninth Circuit, remanded the order to EPA on the sole ground that EPA had not provided an adequate explanation as to one aspect of its decision. (NCAP v. EPA, 544 F.3d 1043, 1052 (9th Cir. 2008)). Specifically, the court held that EPA did not provide "enough information" on why it chose to deviate from the presumptive ten-fold (10X) additional safety factor for the protection of infants and children in FFDCA section 408(b)(2)(C). (Id.). In response to the remand, EPA is again denying the objections; however, EPA has not provided further information on its decision on the children's safety factor because that issue is now either moot or not outcome-determinative with regard to the challenged tolerances.

B. What Is the Agency's Authority for Taking This Action?

EPA's authority for issuing pesticide tolerances is contained in FFDCA section 408(d) and the statutory provisions governing the administrative review process for tolerances is in FFDCA section 408(g)(2). (21 U.S.C. 346a(d) and (g)(2)).

III. Statutory and Regulatory Background

In this unit, EPA provides background on the relevant statutes and regulations governing NRDC's objections as well as on pertinent Agency policies and practices. Unit III.A. summarizes the requirements and procedures in section 408 of the FFDCA and applicable regulations pertaining to pesticide tolerances. Unit III.B. provides an overview of EPA's risk assessment process. It contains an explanation of how EPA identifies the hazards posed by pesticides, how EPA determines the level of exposure to pesticides that pose a concern ("level of concern"), how EPA measures human exposure to pesticides, and how hazard, level of concern conclusions, and human exposure estimates are combined to evaluate risk. Further, this unit presents background information on the EPA's policy with regard to the statutory safety factor for the protection of infants and children.

A. FFDCA

1. *In general*. EPA establishes maximum residue limits, or "tolerances," for pesticide residues in food under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342).

2. *Safety standard for pesticide tolerances*.A pesticide tolerance may only be promulgated by EPA if the tolerance is "safe." (21 U.S.C. 346a(b)(2)(A)(i)). "Safe" is defined by the statute to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." (21 U.S.C. 346a(b)(2)(A)(ii)). In making this safety determination, risks to infants and children are given special consideration. Specifically, this provision creates a presumptive additional safety factor for the protection of infants and children. It directs that "[i]n the case of threshold effects, ... an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children." (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to "use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children." (Id.). The additional safety margin for infants and children is referred to throughout this Order as the "children's safety factor." These provisions on pesticide safety were a part of major revisions to section 408 enacted by the Food Quality Protection Act of 1996 (FQPA). (Pub. L. 104–170, 110 Stat. 1489).

3. *Procedures for establishing, amending, or revoking tolerances*. Tolerances are established, amended, or revoked by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, a tolerance rulemaking is initiated by the party seeking to establish, amend, or revoke a tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing, amending, or revoking the tolerance, issue a proposed rule to do the same, or deny the petition. (21 U.S.C. 346a(d)(4)).

Once EPA takes final action on the petition by establishing, amending, or revoking the tolerance or denying the petition, any person may file objections with EPA and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). Objections and hearing requests must be filed within 60 days. (Id.). EPA's final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

B. EPA Risk Assessment for Tolerances – Policy and Practice

1. *The safety determination - risk assessment*. To assess risk of a pesticide tolerance, EPA combines information on pesticide toxicity with information regarding the route, magnitude, and duration of exposure to the pesticide. The risk assessment process involves four distinct steps: Identification of the toxicological hazards posed by a pesticide; determination of the "level of concern" with respect to human exposure to the pesticide; estimation of human exposure to the pesticide; and characterization of the risk posed to humans by the pesticide based on comparison of human exposure to the level of concern.

a. *Hazard identification*. In evaluating toxicity or hazard, EPA reviews toxicity studies, primarily in laboratory animals, to identify any adverse effects on the test subjects. Animal studies typically involve investigating a broad range of endpoints including gross and microscopic effects on organs and tissues, functional effects on bodily organs and systems, effects on blood parameters (such as red blood cell count, hemoglobin concentration, hematocrit, and a measure of clotting potential), effects on the concentrations of normal blood chemicals (including glucose, total cholesterol, urea nitrogen, creatinine, total protein, total bilirubin, albumin, hormones, and enzymes such as alkaline phosphatase, alanine aminotransfersase and cholinesterases), and behavioral or other gross effects identified through clinical observation and measurement. EPA examines whether adverse effects are caused by either short-term (e.g., "acute") or longer-term (e.g., "chronic") pesticide exposure and the effects of pre-natal and post-natal exposure in animals. EPA also considers whether the adverse effect has a threshold - a level below which exposure has no appreciable chance of causing the effect.

b. *Level of concern/dose-response analysis*. Once a pesticide's potential hazards are identified, EPA determines a toxicological level of concern for evaluating the risk posed by human exposure to the pesticide. In this step of the risk assessment process, EPA essentially evaluates the levels of exposure to the pesticide at which effects might occur. An important aspect of this determination is assessing the relationship between exposure (dose) and response (often referred to as the dose-response analysis). EPA follows differing approaches to identifying a level of concern for threshold and non-threshold hazards. Because this document is only concerned with pesticide hazards that pose a hazard above a defined threshold, only such threshold effects are discussed.

In examining the dose-response relationship for a pesticide's threshold effects, EPA evaluates an array of toxicity studies on the pesticide. In each of these studies, EPA attempts to identify the lowest observed adverse effect level (LOAEL) and the next lower dose at which there are no observed adverse affect levels (NOAEL). Generally, EPA will use the lowest NOAEL from the available studies as a starting point (called "the Point of Departure") in estimating the level of concern for humans. (Ref. 1 at 9 (The Point of Departure "is simply the toxic dose that serves as the 'starting point' in extrapolating a risk to the human population.")). At times, however, EPA will use a LOAEL from a study as the Point of Departure when no NOAEL is identified in that study and the LOAEL is close to, or lower than, other relevant NOAELs. The Point of Departure is in

turn used in choosing a level of concern. EPA will make separate determinations as to the Points of Departure, and correspondingly levels of concern, for both short and long exposure periods as well as for the different routes of exposure (oral, dermal, and inhalation).

In estimating and describing the level of concern, the Point of Departure is at times used differently depending on whether the risk assessment addresses dietary or non-dietary exposures. For dietary risks, EPA uses the Point of Departure to calculate an acceptable level of exposure or reference dose (RfD). The RfD is calculated by dividing the Point of Departure by applicable safety or uncertainty factors. Typically, EPA uses a baseline safety/uncertainty factor of 100X. That value includes a factor of ten (10X) where EPA is using data from laboratory animals to reflect potentially greater sensitivity in humans than animals and a factor of 10X to account for potential variations in sensitivity among members of the human population as well as other unknowns. Additional safety factors may be added to address data deficiencies or concerns raised by the existing data. Under the FQPA, an additional safety factor of 10X is presumptively applied to protect infants and children, unless reliable data support selection of a different factor. This FQPA additional safety factor largely replaces pre-FQPA EPA practice regarding additional safety factors. (Ref. 2 at 4-11).

In implementing FFDCA section 408, EPA's Office of Pesticide Programs, also calculates a variant of the RfD referred to as a Population Adjusted Dose (PAD). A PAD is the RfD divided by any portion of the FQPA safety factor that does not correspond to one of the traditional additional safety factors used in general Agency risk assessments. (Ref. 2 at 13-16). The reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408. Today, RfDs and PADs are generally calculated for both acute and chronic dietary risks although traditionally a RfD or PAD was only calculated for chronic dietary risks. Throughout this document general references to EPA's calculated safe dose are denoted as a RfD/PAD.

Because this order only addresses dietary risks, EPA's approach to non-dietary risk assessment is not further discussed.

c. *Estimating human exposure*. Risk is a function of both hazard and exposure. Thus, equally important to the risk assessment process as determining the hazards posed by a pesticide and the toxicological level of concern for those hazards is estimating human exposure. Under FFDCA section 408, EPA is concerned not only with exposure to pesticide residues in food but also exposure resulting from pesticide contamination of drinking water supplies and from use of pesticides in the home or other non-occupational settings. (See 21 U.S.C. 346a(b)(2)(D)(vi)).

i. *Exposure from food*. There are two critical variables in estimating exposure in food:

• The types and amount of food that is consumed; and

• The residue level in that food.

Consumption is estimated by EPA based on scientific surveys of individuals' food consumption in the United States conducted by the United States Department of Agriculture. (Ref. 1 at 12). Information on residue values comes from a range of sources including crop field trials, data on pesticide reduction (or concentration) due to processing, cooking, and other practices, information on the extent of usage of the pesticide, and monitoring of the food supply. (Id. at 17).

In assessing exposure from pesticide residues in food, EPA, for efficiency's sake, follows a tiered approach in which it, in the first instance (i.e., "Tier 1"), assesses exposure using the worst case assumptions that 100 percent of the crops for which tolerances exist or are proposed are treated with the pesticide and 100 percent of the food from those crops contain pesticide residues at the tolerance level. (Id. at 11). When such an assessment shows no risks of concern, a more complex risk assessment is unnecessary. By avoiding a more complex risk assessment, EPA's resources are conserved and regulated parties are spared the cost of any additional studies that may be needed. If, however, a Tier 1 assessment suggests there could be a risk of concern, EPA then attempts to refine its exposure assumptions to yield a more realistic picture of residue values through use of data on the percent of the crop actually treated with the pesticide and data on the level of residues that may be present on the treated crop. These latter data are used to estimate what has been traditionally referred to by EPA as "anticipated residues." More information on how EPA refines estimates of exposure from pesticides in food can be found in U.S. EPA, *A User's Guide to Available EPA Information on Assessing Exposure to Pesticides in Food* (June 21, 2000). (See 73 FR 42683, 42687 (July 23, 2008)).

ii. *Exposure from water*. EPA may use either or both field monitoring data and mathematical water exposure models to generate pesticide exposure estimates in drinking water. Monitoring and modeling are both important tools for estimating pesticide concentrations in water and can provide different types of information. Monitoring data can provide estimates of pesticide concentrations in water that are representative of specific agricultural or residential pesticide practices and under environmental conditions associated with a sampling design. Although monitoring data can provide a direct measure of the concentration of a pesticide in water, it does not always provide a reliable estimate of exposure because sampling may not occur in areas with the highest pesticide use, and/or the sampling may not occur when the pesticides are being used.

In estimating pesticide exposure levels in drinking water, EPA most frequently uses mathematical water exposure models. EPA's models are based on extensive monitoring data and detailed information on soil properties, crop characteristics, and weather patterns. (69 FR 30042, 30058-30065 (May 26, 2004)). These models calculate estimated environmental concentrations of pesticides using laboratory data that describe how fast the pesticide breaks down to other chemicals and how it moves in the environment. These concentrations can be estimated continuously over long periods of time, and for places that are of most interest for any particular pesticide. Modeling is a useful tool for characterizing vulnerable sites, and can be used to estimate peak concentrations from infrequent, large storms.

Typically EPA uses a two-tiered approach to modeling pesticide concentrations in surface and ground water. The first tier model uses high-end and worst-case assumptions as a screen to identify pesticides that will not result in residues in water that pose a concern. If the first tier model suggests that pesticide levels in water may be unacceptably high, a more refined model is used as a second tier assessment. Second tier models substitute more detailed information for the high-end or worst-case assumptions used in first tier models. For example, a second tier model may incorporate information on the maximum percentage of acreage surrounding a drinking water reservoir that may be devoted to agriculture instead of

assuming that 100 percent of the watershed is, in fact, farmland.

iii. *Residential exposures*. Generally, in assessing residential exposure to pesticides EPA relies on its Residential Standard Operating Procedures (SOPs). (Ref. 3). The SOPs establish models for estimating application and post-application exposures in a residential setting where pesticide-specific monitoring data are not available. SOPs have been developed for many common exposure scenarios including pesticide treatment of lawns, garden plants, trees, swimming pools, pets, and indoor surfaces including crack and crevice treatments. The SOPs are based on existing monitoring and survey data including information on activity patterns, particularly for children. Where available, EPA relies on pesticide-specific data in estimating residential exposures.

d. *Risk characterization*. The final step in the risk assessment is risk characterization. In this step, EPA combines information from the first three steps (hazard identification, level of concern/dose-response analysis, and human exposure assessment) to quantitatively estimate the risks posed by a pesticide. Separate characterizations of risk are conducted for different durations of exposure. Additionally, separate and, where appropriate, aggregate characterizations of risk are conducted for the different routes of exposure (dietary and non-dietary).

For threshold dietary risks, EPA typically estimates risk by expressing human exposure as a percentage of the RfD/PAD. Exposures lower than 100 percent of the RfD/PAD are generally not of concern. Under current procedures, EPA aggregates pesticide exposure from food and drinking water prior to comparing exposure to the RfD/PAD.

Prior to developing appropriate modeling techniques for combining pesticide exposures from food and drinking water, EPA evaluated aggregate dietary exposure and risk in two separate steps. (Ref. 4 at 3-5). First, EPA would compare pesticide exposure from food to the safe level of exposure (i.e., the RfD/PAD). If pesticide exposure from food was less than 100 percent of the RfD/PAD, then EPA would calculate what was called a Drinking Water Level of Comparison (DWLOC) and compare the pesticide exposure concentration in water to the DWLOC. The DWLOC represented the maximum safe concentration of pesticide residue that could be present in drinking water taking into account the level of pesticide exposure from food. The DWLOC was calculated by subtracting pesticide exposure in food from the RfD/PAD and dividing that amount by the maximum water consumption level. So long as the actual pesticide concentration in drinking water was below the DWLOC, aggregate exposure to the pesticide (exposure from food and water) was generally regarded as safe. A numerical example may help explicate this procedure. (To simplify the example, units of exposure are expressed in terms of milligrams of pesticide per day (mg/day) instead of the more standard milligrams of pesticide per kilogram of human body weight per day (mg/kg/day).) Suppose the safe level of exposure to a pesticide (i.e., the RfD/PAD) is 10 mg/day and consumption of food results in exposure to residues of this pesticide at a level of 2 mg/day. Under these facts, exposure to the pesticide from food represents 20 percent of the RfD/PAD. If it is assumed that a person drinks 2 liters of water per day, the DWLOC can be calculated by subtracting pesticide exposure from food from the RfD/PAD (10 mg/day – 2 mg/day = 8 mg/day) and dividing by 2 liters. The resulting DWLOC of 4 mg/liter is the maximum safe concentration of pesticide in drinking water. It follows that so long as actual water concentrations of the pesticide do not exceed 4 mg/liter, EPA can conclude that aggregate dietary exposure to the pesticide from food and water do not exceed the RfD/PAD. If the actual level of the pesticide residue in drinking water were 0.1 mg/liter, then the pesticide concentration in drinking water would be 2.5 percent of the allowable amount or DWLOC ((0.1 mg/liter ÷ 4 mg/liter) x 100 percent) and would represent 2 percent of the RfD/PAD (((2 liters/day x0.1 mg/liter) ÷ 10 mg/kg/day) x 100 percent).

2. *EPA policy on the children's safety factor*. As the brief summary of EPA's risk assessment practice in this unit indicates, the use of safety factors plays a critical role in the process. This is true for the use of traditional 10X safety factors to account for potential differences between animals and humans when relying on studies in animals (inter-species safety factor) and potential differences among humans (intra-species safety factor) as well as the use of the FQPA's additional 10X children's safety factor.

In applying the children's safety factor provision, EPA has interpreted it as imposing a presumption in favor of applying an additional 10X safety factor. (Ref. 2 at 4, 11). Thus, EPA generally refers to the additional 10X factor as a presumptive or default 10X factor. EPA has also made clear, however, that this presumption or default in favor of the additional 10X is only a presumption. The presumption can be overcome if reliable data demonstrate that a different factor is safe for children. (Id.). In determining whether a different factor is safe for children, EPA focuses on the three factors listed in section 408(b)(2)(C) - the completeness of the toxicity database, the completeness of the exposure database, and potential pre- and post-natal toxicity. In examining these factors, EPA strives to make sure that its choice of a safety factor, based on a weight-of-the-evidence evaluation, does not understate the risk to children. (Id. at 24-25, 35).

IV. Challenged Tolerance Regulations for Mepiquat and Acetamiprid

A. Mepiquat

1. *In general*. NRDC challenged a January 23, 2002 action establishing tolerances for mepiquat on cotton gin byproducts and meat byproducts of cattle, goats, hogs, horses and sheep. (67 FR 3113 (January, 23, 2002)). Given mepiquat's exposure pattern and toxicological characteristics, EPA determined that mepiquat potentially presented acute and chronic risks and EPA quantitatively assessed these risks in making its safety determination. (67 FR at 3116). All of these risks were found to be below the Agency's level of concern. (Id.).

2. *Children's safety factor determination*. For mepiquat, EPA identified increased uncertainty regarding effects on the young because a developmental neurotoxicity (DNT) study was outstanding. (65 FR 1790, 1794 (January 12, 2000)). EPA concluded, however, that this uncertainty was offset by a number of factors and removed the additional 10X safety factor. First, EPA noted that no increased sensitivity in young animals was observed in the pre- and post-natal studies with mepiquat. (65 FR at 1794). In fact, in two out of the three studies involving young animals no effects were seen in the offspring at all (developmental study in rats; 2-generation reproduction study in rats). (Ref. 5 at 2). Further, even in the third study concerning pre- and post-natal effects there were reasons to accord reduced weight to the pre- or post-natal effects observed given that effects were seen in the offspring and the parents only at the highest dose tested (developmental study in rabbits). (Id.). Second, although neurotoxic behavioral effects in adult animals were found (triggering the DNT study requirement), there was no evidence reflecting special

concern for developing fetuses or the young such as "neuropathy in adult animals; [central nervous system] malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring." (65 FR at 1794). Finally, exposure estimates were found not to understate exposure given that the estimates for food were "Tier 1" conservative assumptions which would not underestimate exposure. (65 FR at 1793).

B. Acetamiprid

1. *In general*. NRDC challenged a March 27, 2002, action establishing tolerances for acetamiprid on dried citrus pulp, the citrus fruit crop group, cotton gin byproducts, cotton undelinted seed, grapes, the fruiting vegetable crop group, the leafy brassica vegetable crop group, the leafy vegetable crop group, the pome fruit group, tomato paste, as well as various animal products. (67 FR 14649 (March 27, 2002)). Given acetamiprid 's exposure pattern and toxicological characteristics, EPA determined that acetamiprid potentially presented acute, chronic, short-term, and intermediate-term risks and EPA quantitatively assessed these risks in making its safety determination. (Id. at 14656-14657). All of these risks were found to be below the Agency's level of concern. (Id.).

2. *Children's safety factor determination*. For acetamiprid, two factors increased uncertainty or raised concern about the impacts on children: That a DNT study was outstanding; and that increased sensitivity in the young was observed in the 2-generation reproduction study. (67 FR at 14655). EPA concluded, however, that these concerns were offset by other considerations. First, the DNT study had been required based only on neurotoxic behavioral effects seen in adults, and not out of a special concern for developing fetuses or the young. Second, the increased sensitivity observed in the 2-generation reproduction study was only qualitative. Sensitivity is considered to be qualitative only when effects occur at the same dose levels in adult and juvenile animals but the effects in the juvenile animals are qualitatively more severe than the effects in the adults. Third, the other two studies investigating pre- or post-natal effects in the young showed either no adverse effects even at levels that showed toxicity in parental animals, or adverse effects of the same qualitative nature at the same dose in parental and young animals. (Id.). Finally, exposure estimates were judged unlikely to underestimate exposure, especially because "highly conservative" "Tier 1" assumptions were used for exposure in food. (67 FR at 14654). Weighing all of these considerations EPA retained a 3X additional safety factor to address chronic risks and waived the factor entirely for acute risks. No additional factor was deemed necessary as to acute risks because qualitative sensitivity in the young was only observed in a study involving chronic dosing and as to an adverse effect related to repeat dosing.

V. Subsequent Tolerance Actions for Mepiquat and Acetamiprid

A. Mepiquat

Since January, 2002, EPA has received no further tolerance petitions concerning mepiquat and EPA has undertaken no tolerance rulemakings for mepiquat.

B. Acetamiprid

Since March, 2002, EPA has received several petitions for additional acetamiprid tolerances and has established tolerance regulations on four occasions. Because section 408 requires EPA in setting a pesticide tolerance to consider aggregate exposure to the pesticide, "including dietary exposure under . . . all other tolerances for the pesticide chemical residue," in each of these subsequent actions EPA took into account exposure to acetamiprid under challenged tolerances established on March 27, 2002 (dried citrus pulp, the citrus fruit crop group, cotton gin byproducts, cotton undelinted seed, grapes, the fruiting vegetable crop group, the leafy brassica vegetable crop group, the leafy vegetable crop group, the pome fruit group, tomato paste, as well as various animal products). Each of the subsequent tolerance rulemakings is described below.

1. *2005 – Tolerances for tuberous and corm vegetables*. On April 13, 2005, EPA established tolerances for acetamiprid on tuberous and corm vegetables. (70 FR 19283 (April 13, 2005)). EPA concluded that the additional exposure from these new tolerances, when aggregated with exposure under existing tolerances, was safe.

With regard the children's safety factor, EPA relied on a revised analysis taking into account its Children's Safety Factor Policy, which had not been released at the time of the risk assessment for the NRDC-challenged tolerances and recently-submitted data on acetamiprid and other similar pesticides. EPA concluded that the presumptive 10X children's safety factor could be removed entirely. (70 FR at 19289). Although increased sensitivity to the young had been observed in the 2-generation rat study and a recently-submitted DNT study had not been fully evaluated, EPA determined that other factors outweighed these concerns. As to the increased sensitivity, EPA noted that: "i. There is a clear NOAEL for [the effects seen in] the offspring, and; ii. These effects occurred in the presence of parental toxicity and only at the highest dose tested." (Id.). Further, EPA noted that either the NOAEL for the offspring in the reproduction study or some lower NOAEL was used in each risk assessment for acetamiprid. That meant the standard 10X factor to account for intra-human variability (in addition to the 10X factor for inter-species variability) was applied to the clearly-defined NOAEL for offspring effects or to some lower NOAEL. As to the recently-submitted DNT, EPA stated that a "preliminary review of the study indicates the results are not likely to have a significant impact on risks for the currently proposed use, or on existing uses of acetamiprid . . . [and that] developmental neurotoxicity data received and reviewed for other compounds in this chemical class indicate that the results of the required DNT will not likely impact the regulatory doses selected for the proposed uses of acetamiprid." (Id.). Finally, EPA relied upon the fact that the exposure assessment for acetamiprid was conservative in that it assumed all foods with tolerances are treated with acetamiprid and bear tolerance-level residues (i.e., a Tier 1 assessment).

2. *2007 – Tolerances for almond hulls, et al*. On November 28, 2007, EPA established tolerances for acetamiprid on almond, hulls; fruit, stone, group 12, except plum, prune; nut, tree, group 14; pea and bean, succulent shelled, subgroup 6B; pistachio; plum, prune, dried; plum, prune, fresh; vegetable, cucurbit, group 9; and vegetable, legume, edible podded, subgroup 6A. (72 FR 67256 (November 28, 2007)). EPA concluded that the additional exposure from these new tolerances, when aggregated with exposure under existing tolerances, was safe.

With regard to the children's safety factor, EPA relied on a revised analysis taking into account its now-completed review of the acetamiprid DNT study. EPA again concluded that the presumptive 10X children's safety factor could be removed entirely. Although qualitatively increased sensitivity to the young had been observed in the 2-generation rat study and the DNT study, EPA "characterized the degree of concern for the effects observed in the acetamiprid DNT and the 2-generation

reproduction study as low, noting that there is a clear NOAEL for the offspring effects in both studies, the toxicology database is complete, and regulatory doses [Points of Departure] were selected to be protective of potential offspring effects in both the DNT and the 2-generation study." (72 FR at 67260). Specifically, as to the last consideration, EPA cited the fact that the Points of Departure for calculating the RfD/PADs were at or below the clearly-defined NOAELs from the 2-generation reproduction and DNT studies. That means that at least a 100-fold margin of safety was being provided with respect to the clearly-defined NOAELs from these studies. Further, even though the exposure assessment was more refined than in prior acetamiprid tolerance actions, EPA still relied on conservative values from field trial studies and drinking water modeling.

3. *2008 – Tolerances for bushberries, et al.* On January 16, 2008, EPA established tolerances for acetamiprid on the bushberry subgroup 13-07B; the caneberry subgroup 13-07A; the low growing berry subgroup 13-07G; the onion, bulb, subgroup 3-07A; and the onion, green, subgroup 3-07B. (73 FR 2809 (January 16, 2008)). EPA concluded that the additional exposure from these new tolerances, when aggregated with exposure under existing tolerances, was safe. EPA relied upon its November 28, 2007 acetamiprid rulemaking to make its safety determination, noting that the tolerances in this action had been included in the risk assessment performed to support the 2007 action. (73 FR at 2811).

4. *2010 – Tolerances for small vine climbing fruit, et al.* On February 10, 2010, EPA established tolerances for acetamiprid on the small vine climbing fruit, except fuzzy kiwifruit, subgroup 13-07F; and tea, dried. (75 FR 6576 (February 10, 2010)). EPA concluded that the additional exposure from these new tolerances, when aggregated with exposure under existing tolerances, was safe. With regard the children's safety factor, EPA concluded that the presumptive 10X children's safety factor could be removed entirely based on the rationale in the 2007 acetamiprid rulemaking. (75 FR at 6581).

VI. Summary of NRDC Objections, Administrative Review of the Objections, and Judicial Review of EPA's Order Denying the Objections

A. NRDC's Objections

On four occasions in the first half of 2002, the NRDC and various other parties filed objections with EPA to final rules under FFDCA section establishing pesticide tolerances for various pesticides. (69 FR 30042 (May 26, 2004)). The objections applied to 14 pesticides and 112 separate pesticide tolerances. The challenged tolerances included the tolerances for mepiquat and acetamiprid addressed in today's order. The objections to the mepiquat tolerances were filed on March 19, 2002, and grouped with objections to tolerances for imidacloprid, bifenazate, zeta-cypermethrin, and diflubenzuron. The objections to the acetamiprid tolerances were filed on May 21, 2002, and grouped with objections to tolerances for isoxadifen-ethyl, propiconazole, fenhexamid, and fluazinam.

Although NRDC's petitions raised dozens of issues, most of the issues related to two main claims: That EPA had not properly applied the additional 10X safety factor for the protection of infants and children in section 408(b)(2)(C); and that EPA had not accurately assessed the aggregate exposure of farm children to pesticide residues. Many of the issues were not fact-specific to the challenged tolerances but rather represented a generic challenge to EPA's implementation of the FQPA.

Two specific issues raised by NRDC are worthy of greater description because they later figured in the judicial review of EPA's disposition of the objections. First, as to several of the pesticides, NRDC argued that EPA had unlawfully removed the 10X children's safety factor because EPA had required that a DNT study be submitted for the pesticides but such study had not yet been completed. NRDC framed the issue as follows:

> EPA has required DNT tests for imidacloprid, mepiquat, and zeta-cypermethrin, and these studies have not been conducted. EPA, therefore cannot argue that "reliable data" justifies removing the statutory presumptive 10X FQPA safety factor.

(Ref. 6 at 9). Second, NRDC argued that EPA could not lawfully remove the children's safety factor as to all of the challenged pesticides because EPA relied on a drinking water exposure models to estimate pesticide exposure levels in water instead of "collect[ing] pesticide-specific data on water-based exposure." (Ref. 6 at 6; Ref. 7 at 5). According to NRDC, drinking water models, as a definitional matter, could not supply the "reliable data" needed to choose a children's safety factor differing from the presumptive value. (Ref. 6 at 6; Ref. 7 at 5-6).

B. EPA's Denial of the Objections

EPA denied NRDC's objections in two separate orders. The first was issued on May 26, 2004, and addressed only the tolerances for imidacloprid. (69 FR 30042 (May 26, 2004). The second was released on August 10, 2005 and addressed the tolerances for the remaining 14 pesticides. (70 FR 46706 (August 10, 2005)). The second order relied heavily on the imidacloprid order because, in the process of resolving the claims pertaining to imidacloprid, EPA resolved many of NRDC's generic attacks on EPA's interpretation of the FQPA.

As to the DNT study and the children's safety factor, EPA rejected "NRDC's contention that an EPA finding that a DNT study is needed in evaluating the risks posed by the pesticide is outcome-determinative as regards to retaining the children's safety factor until such time as the DNT study is submitted and reviewed." (70 FR at 46724). EPA carefully reviewed all of the evidence cited by NRDC regarding the DNT study and concluded that NRDC had not shown that the DNT was so critical to the protection of children that in the absence of that study EPA was conclusively precluded from exercising its statutory authority to make a case-by-case determination regarding the appropriate children's safety factor. EPA specifically did not address the factual considerations relating to its individual children's safety factor decisions as to mepiquat and acetamiprid (and the other pesticides), noting that "NRDC has offered no pesticide-specific arguments as to the pesticides in this proceeding as to why the absence of a DNT study requires the retention of the default 10X additional factor." (Id.)

With regard to whether reliance on drinking water models precluded lowering of the children's safety factor, EPA exhaustively reviewed the underlying factual basis for its models, the scientific peer review they had received, and how the models had worked in practice. EPA concluded that "the models are based on reliable data and will produce estimates that are unlikely to underestimate exposure to pesticides in drinking water." (Id. at 46726). Accordingly, NRDC's claim that only actual pesticide-specific water monitoring data could provide "reliable data" on the levels of pesticides in drinking water was rejected.

C. Judicial Review

1. *NRDC's Petition for Review*. In August, 2005, NRDC and the Northwest Coalition for Alternatives to Pesticides (NCAP) filed petitions for review of EPA's August 10, 2005 order. No challenge had been filed to the May 26, 2004 order. The petitions were filed in the Second and Ninth Circuits and the matter was assigned to the Ninth Circuit. The consolidated petitions sought review as to EPA's denial of NRDC's objections as they pertained to the tolerances of the following seven pesticides: acetamiprid, fenhexamid, halosulfuron-methyl, isoxadifen-ethyl, mepiquat, pymetrozine, and zeta-cypermethrin.

NRDC/NCAP's brief argued that EPA had unlawfully removed or lowered the children's safety factor as to these seven pesticides and that EPA's establishment of tolerances for the seven pesticides was arbitrary and capricious. (Ref. 8). As to the contentions regarding the children's safety factor, NRDC/NCAP made several independent claims as to why EPA's action was unlawful. These claims were:

i. As to acetamiprid, halosulfuron-methyl, mepiquat, pymetrozine, and zeta-cypermethrin, EPA had no discretion to alter the children's safety factor because it had determined that a DNT study was specifically needed to address concerns regarding these pesticides (DNT studies were not required on fenhexamid and isoxadifen-ethyl);
ii. EPA's decision on the children's safety factor could not be upheld because EPA provided "no pesticide-specific response to NRDC's objections with respect to the missing DNT studies, and does not offer any explanation or justification for the agency's departure from the tenfold children's safety factor for these five pesticides;"
iii. EPA lacked reliable data on pesticide exposure levels in drinking water for each of the pesticides and such data are necessary to justify altering the children's safety factor; and
iv. EPA must retain the children's safety factor for each of the pesticides because data showed that they resulted in pre- or post-natal toxicity.

NRDC argued EPA's decision was arbitrary and capricious because EPA determined that additional data were needed on the pesticides but EPA had not waited for submission of that data before establishing the pesticide tolerances and because EPA had not offered a sufficient explanation of its decisions on the children's safety factor.

2. *The Ninth Circuit's decision*. On September 19, 2008, the Ninth Circuit unanimously determined that:

i. It was not arbitrary and capricious for EPA to have established the tolerances for acetamiprid, mepiquat, and pymetrozine without waiting for DNT studies for these pesticides;

ii. EPA had offered a reasoned explanation for why, as a general matter, the children's safety factor could be reduced in the absence of a DNT study; and
iii. It was reasonable for EPA to rely on drinking water models in estimating pesticide levels in water in making children's safety factor determinations.

(*NCAP* v. *EPA*, 544 F.3d 1043, 1049-1051 (9th Cir. 2008)). Additionally, by a 2-to-1 vote, the court remanded to EPA its decision on the children's safety factor for acetamiprid, mepiquat, and pymetrozine. The majority found that EPA's order on NRDC's objections had not adequately explained the pesticide-specific reasons for removing or reducing the children's safety factor as to these pesticides in the absence of a required DNT study. (Id. at 1052). Without elaborating, the court dismissed all other issues raised by NRDC/NCAP. (Id. at 1053).

Although NRDC/NCAP's petition for review concerned seven pesticides, the court only remanded to EPA the tolerance decisions on acetamiprid, mepiquat, and pymetrozine. The petition for review was denied as to the other four pesticides because the remand only pertained to pesticides for which there was a question concerning EPA's pesticide-specific choice of a children's safety factor in the absence of a required DNT study. As to the fenhexamid and isoxadifen-ethyl tolerances, a DNT study had not been required by EPA. For halosulfuron-methyl and zeta-cypermethrin tolerances a DNT study had been required and had not been submitted at the time of the tolerance action; however, by the time of the oral argument, the circumstances had changed. As to zeta-cypermethrin, the DNT study had been submitted and reviewed by EPA and EPA had established further tolerances in reliance on the DNT study. As to halosulfuron-methyl, EPA had withdrawn the requirement for a DNT. EPA notified the court that there was no longer a live controversy as to the tolerances for halosulfuron-methyl and zeta-cypermethrin and NRDC/NCAP and the court agreed the petition was moot as to these pesticides. (544 F.3d at 1048 n.4; Refs. 9, 10).

VII. Revised Order on Remand

On remand, EPA has determined that NRDC's objections should again be denied. NRDC's objections to the acetamiprid tolerances are now moot for the same reasons that the objections to the zeta-cypermethrin and halosulfuron-methyl tolerances were found to be moot. The objections to the mepiquat tolerance are denied because all issues which could have affected EPA's decision on that tolerance have been resolved by the Ninth Circuit.

A. Acetamiprid and Mepiquat

Like zeta-cypermethrin, EPA has received a DNT study for acetamiprid and relied on that study in establishing additional tolerances for acetamiprid. (72 FR 67256 (November 28, 2007); 73 FR 2809 (January 16, 2008); 75 FR 6576 (February 10, 2010)). In establishing new tolerances for acetamiprid, EPA concluded that aggregate exposure under the new tolerances as well as all existing tolerances (including the ones challenged in NRDC's 2002 objections) is safe. No objections to these new acetamiprid tolerances were filed within the 60 day statutory timeframe for objections. Accordingly, just as the Ninth Circuit concluded (and NRDC agreed) that there was no live controversy concerning the zeta-cypermethrin tolerances and "EPA's [alleged] failure to explain why it had reliable data in the absence of [a DNT study]," (544 F.3d at 1408), there is no live controversy as to whether EPA provided an adequate explanation for its now-superseded tolerance decision that it had reliable data to reduce or remove the children's safety factor for acetamiprid in the absence of a DNT study.

B. Mepiquat

EPA has not taken regulatory action as to mepiquat subsequent to the challenged tolerance action and, thus, NRDC's challenge to the mepiquat tolerance is not moot. Nonetheless, due to the circumstances of the mepiquat tolerance, EPA does not need to address the merits of the only remaining objection before EPA — that EPA lacks reliable data justifying removal of the children's safety factor for mepiquat. As EPA ruled in a prior order, it may "refuse to adjudicate the merits of claims where it can be shown that the claims - even if true - do not justify the relief requested." (72 FR 39318, 39323-

39324 (July 18, 2007)). That principle applies to the mepiquat objection because, as explained below, even if EPA retains the 10X children's safety it would not change EPA's safety determination. Thus, NRDC's objection to the removal of the children's safety factor, even if upheld, would not support the relief it requested - "that EPA refrain from establishing the new tolerances for . . .mepiquat . . . until the pesticide tolerances have been assessed and determined to be safe[,] consistent with the requirements of the FQPA." (Ref. 6 at 22).

An EPA decision to retain the 10X children's safety factor has the effect of decreasing the "safe dose" or RfD/PAD by a factor of 10. Thus, if prior to application of the 10X children's safety factor, the level of exposure from a particular pesticide constituted 5 percent of the RfD/PAD, after application of the safety factor the level of exposure to the pesticide would rise by a factor of 10 to 50 percent of the RfD/PAD. Similarly, a pesticide which had an exposure level at 50 percent of the RfD/PAD before applying the 10X children's safety factor, would have an exposure level of 500 percent of the RfD/PAD after application of the factor. Only in the latter case, would retention of the children's safety factor raise a safety concern. Thus, for pesticides with sufficiently low risks, the decision on retention or removal of the children's safety factor is not outcome-determinative as to EPA's safety finding. (71 FR 43906, 43916-43917 (August 2, 2006)).

Mepiquat is one of those low risk pesticides. As EPA noted in the challenged tolerance document, acute exposure to mepiquat from residues in food equaled 1.5 percent of the acute RfD/PAD and acute exposure to mepiquat in water was an infinitesimal. (67 FR at 3115; 65 FR 1790, 1793 (January 12, 2000) (acute exposure to mepiquat in drinking water is 0.031 percent of the allowable amount – i.e. the acute DWLOC was 6,000 ppb and estimated acute exposure level was 1.9 ppb); see Unit III.B.1.d. (explaining how allowable amounts of pesticide residues in drinking water were calculated)). Similarly, chronic exposure to mepiquat from residues in food equaled 0.3 percent of the chronic RfD/PAD and chronic exposure to mepiquat in water was also infinitesimal. (67 FR at 3115; 65 FR at 1794 (chronic exposure to mepiquat in drinking water is 0.018 percent of the allowable amount — i.e. the chronic DWLOC was 6,000 ppb and the estimated chronic exposure level was 1.1 ppb)). Retention of the 10X children's safety would raise the percentage exposure to approximately 15 percent of the acute RfD/PAD and 3 percent of the chronic RfD/PAD. Because these exposure levels would still be well below the applicable RfD/PADs, they would not change EPA's determination that the petitioned-for mepiquat tolerances are safe. Accordingly, because NRDC's objection to removal of the children's safety factor does not justify its request for EPA to refrain from establishing the mepiquat tolerances, it is denied.

VIII. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's final order regarding objections filed under section 408 of FFDCA. The FFDCA specifically directs that objections be resolved by "order," and thus this action is an adjudication and not a rule. (21 U.S.C. 346a(g)(2)(C)). The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

IX. 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, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

X. References

1. USEPA, *A User's Guide to Available EPA Information on Assessing Exposure to Pesticides in Food* (June 21, 2000).

2. Office of Pesticide Programs, USEPA, Office of Pesticide Programs' Policy on the Determination of the Appropriate FQPA Safety Factor(s) For Use in the Tolerance Setting Process (February 28, 2002).

3. Office of Pesticide Programs, USEPA, Standard Operating Procedures (SOPs) for Residential Exposure Assessments (Draft December 19, 1997).

4. Office of Pesticide Programs, USEPA, "Estimating the Drinking Water Component of a Dietary Exposure Assessment" (November 2, 1999).

5. Office of Prevention, Pesticides and Toxic Substances, USEPA, Memorandum from Brenda Tarplee to Margarita Collantes, "Mepiquat Choloride – Report of the FQPA Safety Factor Committee" (November 1, 1999).

6. NRDC, Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Imidacloprid, Mepiquat, Bifenazate, Zeta-cypermethrin, and Diflubenzuron Tolerances (filed March 19, 2002).

7. NRDC, Objections to the Establishment of Tolerances for Pesticide Chemical Residues: Isoxadifen-ethyl, Acetamiprid, Propiconazole, Furilazole, Fenhexamid, and Fluazinam Tolerances (filed May 20, 2002).

8. Petitioners' Brief, *NCAP* v. *EPA*, Case Nos. 75255, 76807 (9th Cir. March 6, 2006).

9. Letter from Kent E. Hanson, U.S. Department of Justice to Cathy Catterson, Clerk of the Court, United States Court of Appeals, Ninth Circuit, Notice of Supplemental Authority in *Northwest Coalition for Alternatives to Pesticides* v. *EPA*, Nos. 05-75255 & 05-76807 (May 25, 2007).

10. Letter from Aaron Colangelo, U.S. Department of Justice to Cathy Catterson, Clerk of the Court, United States Court of Appeals, Ninth Circuit, Response to EPA's Notice of Supplemental Authority in *Northwest Coalition for Alternatives to Pesticides* v. *EPA*, Nos. 05-75255 & 05-76807 (May 29, 2007).

List of Subjects in 40 CFR Part 180

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

Dated: July 27, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2010–19431 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0006; FRL–9185–4]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Deletion of the Peter Cooper Corporation (Markhams) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA), Region 2 is publishing a direct final notice of deletion of the Peter Cooper Corporation (Markhams) Superfund Site (Markhams Site) located in the Town of Dayton, Cattaraugus County, New York from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New York, through the Department of Environmental Conservation (NYSDEC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final rule will be effective September 20, 2010 unless EPA receives adverse comments by September 7, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2000–0006, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: henry.sherrel@epa.gov.*
- *Fax:* 212–637–3966.
- *Mail:* Sherrel Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866
- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (*telephone:* 212–637–4308). Such deliveries are only accepted during the Docket's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2000–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866. (212) 637–4308.

Hours: Monday through Friday: 9 a.m. through 5 p.m.

or

Town of Dayton, Town Building, 9100 Route 62, South Dayton, New York 14138. (716) 532–9449.

Hours: Monday through Friday: 9 a.m. through 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Sherrel D. Henry, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, NY, NY 10007–1866, (212) 637–4273, *e-mail: henry.sherrel@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
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I. Introduction

EPA Region 2 is publishing this direct final Notice of Deletion of the Peter Cooper Corporation (Markhams) Superfund Site (Markhams Site) from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e) (3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 20, 2010 unless EPA receives adverse comments by September 7, 2010. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Markhams Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response

action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided New York State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the NYSDEC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *Dunkirk Observer*. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Markhams Site, EPA ID No. NYD980592547, is located off Bentley Road, in the Town of Dayton, Cattaraugus County, New York. The Site is approximately 103 acres in size and is bordered to the northwest by Bentley Road; to the northeast by a wooded property and farm field; to the southeast by a railroad right-of-way; and to the southwest by hardwood forest. Site access is restricted by a locked cable gate at the Bentley Road entrance. Surrounding property is rural, consisting of small farm fields, open meadow and forests.

The Site was used for the disposal of wastes remaining after the manufacturing process from the Peter Cooper Corporation (PCC), a former animal glue and adhesives plant located in Gowanda, New York. Materials disposed at the Site were reported to consist of "cookhouse sludge," residue pile material and vacuum filter sludge. Cookhouse sludge was so named because of a cooking cycle that occurred just prior to extraction of the glue. It was derived primarily from chrome-tanned hides obtained from tanneries and leather finishers. Residue pile material is described as air-dried cookhouse sludge, which was stabilized to a dry, granular form. Vacuum filter sludge reportedly was produced during dewatering of cookhouse sludge. The waste material has been shown to contain elevated levels of chromium, arsenic, zinc, and several organic compounds.

PCC purchased the Site in 1955 and sold the Site, among other assets including its corporate name, in 1976 to a foreign company, Rousselot Gelatin Corporation, and its parent, Rousselot, S.A. of Paris, France. Rousellot Gelatin subsequently changed its name to the Peter Cooper Corporation. From approximately 1955 until September 1971, it was reported that approximately 9,600 tons of waste material from the Gowanda plant were placed at the Site over an approximately 15-acre area.

In addition, PCC transferred approximately 38,600 additional tons of waste materials from the Gowanda plant to the Site pursuant to a New York State Supreme Court Order (8th J.D. Cattaraugus County) dated June 1971. PCC arranged the material into several waste piles approximately 20 feet high and covering a total of approximately seven acres, mostly in the original disposal area.

The NYSDEC completed preliminary site investigations in 1983 and 1985 and identified the presence of arsenic, chromium and zinc in soil samples.

At that time, the Site did not meet the New York State statutory definition for an inactive hazardous waste disposal site and NYSDEC could not use State funds to implement a remedial program. Consequently, the NYSDEC removed the Site from its Registry of Inactive Hazardous Waste Disposal Sites and transferred the Site to EPA for further evaluation.

In 1993, EPA conducted a Site Sampling Inspection, which included the collection and analysis of soil and surface water samples from the Site. Chromium and arsenic were detected in soils above background concentrations within the waste piles. In 1999, EPA determined a Hazard Ranking System score for the Site so that it could be evaluated for potential listing on the National Priorities List (NPL). The Site was proposed to the NPL on April 23, 1999 (*64 FR 19968*) and subsequently added on February 4, 2000 (*65 FR 5435*).

Remedial Investigation and Feasibility Study (RI/FS)

On September 29, 2000, EPA issued a Unilateral Administrative Order (UAO) to several potentially responsible parties (PRPs) to perform the RI/FS for the Site, subject to EPA oversight. The RI characterized the physical properties of the soil fill piles, soils around the perimeter of the fill piles (perimeter surface soils), native subsurface soils, wetland sediments, groundwater, and soil gas.

The PRPs, through their consultants, Benchmark Environmental Engineering and Science PLLC (Benchmark) and Geomatrix Consultants, performed the Remedial Investigation (RI) from November 2000 to December 2003 and the final RI report was submitted to EPA in February 2005. The chemicals of concern (COCs) in site media included: arsenic, total chromium and hexavalent

chromium (metal COCs). The results of the RI suggest that low concentrations of metal COCs can leach from the waste fill. However, the data from native soil samples (non-waste fill) collected below the waste fill indicate that metals have not migrated substantially in native soil. Arsenic and total chromium concentration detected in the surface soil samples from the cover of the fill piles were above soil criteria. Soil testing below the fill piles identified decreasing concentrations of metal COCs with depth. Metal COCs were reported to exceed the NYS Groundwater Quality Standards and Guidance Values (GWQS/GVs) in one groundwater monitoring well MW–2S for arsenic, chromium, zinc and benzene (with benzene only slightly above the GWQS/GVs). In the RI report, difficulties in obtaining representative samples from monitoring well MW–2S were identified. Suggested possible explanations for these difficulties were the age of the well and construction materials. The report concluded that the groundwater analytical results collected from well MW–2S during the first and second sampling events might not be representative of Site groundwater. To address the limitations of the sampling from monitoring well MW–2S, the ROD required that any groundwater monitoring program at the Site include replacing well MW–2S and conducting analytical sampling for metals. Monitoring well MW–2S was decommissioned by the PRPs contractor in September 2008. MW–2S was found to be constructed of steel casing and screen, and was found to be visibly rusted/rotted on removal. MW–2S was replaced with a new PVC replacement well (MW–2SR). Site data indicate that transport of metal COCs and organic compounds is not considered significant at the Site.

The RI concluded that all groundwater from the Site ultimately discharges to Wetland F before reaching the southwestern property boundary located more that 500 feet across the wetland. Site-related chemicals in the overburden groundwater are transported beneath the Site to the southwest in the direction of Wetland F. Water quality data indicate subsurface conditions are not conducive to transport of metal COCs. Although chromium was widely detected in soils across the Site, chromium concentrations were not elevated in groundwater (except in monitoring well MW–2S). Hexavalent chromium was detected at a low concentration in one of 18 samples analyzed: the detection was not confirmed in the second sampling event. The lack of hexavalent chromium in groundwater suggests conditions are not suitable for the oxidation of chromium (Cr^{+3}) to hexavalent chromium (Cr^{+6}). The slightly alkaline subsurface soil conditions and relatively low concentrations of manganese inhibit reactions that can produce hexavalent chromium. These results are indicative that the area of groundwater contamination is limited to a relatively small area, under the waste piles.

Based on the results of the RI report a risk assessment was performed for the Site. The risk assessment determined that if infiltration of rainwater through the waste/fill material is not curtailed, then the quality of Site groundwater would continue to degrade, resulting in a potential future risk from groundwater ingestion.

A Feasibility Study (FS) was then completed by the PRPs and submitted to EPA in August 2006. The FS Report identified and evaluated effective remedial alternatives for the Site, consistent with the guidelines presented in "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA." The FS evaluated five alternatives, including no action, institutional controls, two containment alternatives and an excavation/off-site disposal remedies. The remedial alternatives were developed to satisfy the Remedial Action Objectives (RAO) for the Site:

- Minimize or eliminate contaminant migration from contaminated soils to the groundwater.
- Prevent direct contact with waste fill materials.
- Mitigate erosion and migration of waste material from the exposed surface.

Selected Remedy

Based upon the results of the RI/FS, a Proposed Plan, and a Public Meeting, a Record of Decision (ROD) was signed in December 2006. The major components of the selected remedy included consolidation of various waste/fill piles into a single waste/fill area, followed by capping with a low-permeability soil cover. Specifically, the ROD called for:

- Consolidating the waste/fill piles into seven acres or less, followed by capping the consolidated wastes with a low permeability soil cover, consistent with the requirements of 6 NYCRR Part 360, including seeding with a seed mixture to foster natural habitat, and replacement of waste piles moved during consolidation with native soil.
- Imposing institutional controls in the form of an environmental easement/restrictive covenant filed in the property records of Cattaraugus County that will at a minimum require: (a) Restricting activities on the Site that could compromise the integrity of the cap; and (b) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met.
- Developing a site management plan that provides for the proper management of all remedy components post-construction, such as institutional controls, and also includes: (a) Monitoring of groundwater to ensure that, following the soil consolidation and capping, the contamination is attenuating and groundwater quality continues to improve; (b) an inventory of any site use restrictions; (c) necessary provisions for ensuring the easement/covenant remains in place and is effective; (d) provision for any operation and maintenance required of the components of the remedy; and (e) the owner/operator or entity responsible for maintenance of the Site to complete and submit periodic certifications concerning the status of the institutional and engineering controls for the Site.
- Evaluating site conditions at least once every five years to ensure that the remedy continues to protect public health and the environment.

Response Actions

In 2008, EPA concluded Consent Decree negotiations with the PRPs related to the performance of the design and implementation of the remedy called for in the ROD. On February 19, 2008, the Consent Decree was entered in United States District Court (approved by the Judge). On March 12, 2008 Benchmark Environmental Engineering and Science PLLC (Benchmark) was approved as the supervising contractor to conduct the remedial design and construction work at the Site.

The PRPs prepared a Remedial Design (RD) Report which was approved by EPA on July 3, 2008. The RD report outlined the following remedial construction measures: mobilization, site preparation, waste/fill consolidation and grading, and cover system (barrier layer material placement and compaction, topsoil and seeding, and passive gas venting).

Zoladz Construction Company, Inc. was approved as the subcontractor for the Remedial Action (RA) and mobilized to the site on July 30, 2008. Site preparation work included clearing, grubbing and access improvements required for consolidation and covering work. Vegetation was stripped from the surface of the waste fill where cover soils were placed.

Waste/fill consolidation involved relocation of the various waste/fill piles located at various areas across the center of the site into a single area. Regraded and consolidated waste/fill were placed in maximum 12-inch lifts and compacted with rollers to 90% modified density.

A total of approximately 40,000 cubic yards of waste/fill were consolidated and compacted. The waste fill consolidated area has a footprint of approximately four acres, with an average peak elevation (including cover soil) of 14 feet above surrounding grade.

Landfill Cap Construction

The final landfill cap meets the grading requirements of 6 NYCCR Part 360–2.13(q)2(ii) which requires that the barrier component of the cap have a slope of no less than 4 percent to promote positive drainage and no more than 33 percent to minimize erosion.

Cover System

The final cover system was constructed to function with minimum maintenance, promote drainage, and minimize erosion. The cover system was designed with an 18-inch thick recompacted low permeability (less than 1×10^{-6} cm/sec) soil barrier layer and 6 inches of topsoil.

Barrier Layer

Barrier soil was placed and compacted to provide a thickness of 18 inches across the final waste surface. Barrier layer soil was compacted with rollers. Smooth drum rollers were used for temporary sealing of the lifts and for the stockpiled soils.

Topsoil, Seeding and Tree Planting

Following the final grading and compaction of the barrier layer, topsoil was placed to a depth of six inches (after placement and rolling). Topsoil was placed and graded to a smooth, even surface and was rolled and raked to remove ridges and fill in depressions, ruts and low spots. A conservation seed mixture was used to foster a natural habitat and minimize maintenance requirements. Fifty trees, including 25 hardwood trees, 13 poplars and 12 birch trees were replanted at various locations across the Site to provide shelter for the wildlife and stimulate repopulation of the wooded areas outside of the consolidated area.

Cleanup Goals

Results of subsurface soil data indicated that metal COCs have not migrated into native soils beneath the waste fill piles. The consolidated waste piles were removed and underlying native soils were scraped and consolidated into one central area. As a result, contaminated-specific soil cleanup values for the Site were not developed. Groundwater is being monitored through post-remedial groundwater and surface water sampling. The primary objectives of the remedy are to reduce or eliminate any direct contact threat associated with the contaminated soils/fill and minimize or eliminate contaminant migration from contaminated soils to the groundwater.

Operation and Maintenance

The primary components at the Site to be monitored and maintained include groundwater and surface water quality, the waste/fill consolidation area cover system (the Cap), and gas vents. These goals are being met through the Operation, Maintenance and Monitoring (OM&M) Plan that describes personnel requirements, responsibilities, duties, and specifics post-construction sampling, analysis, and monitoring to be conducted to monitor the effectiveness of the remedy.

The OM&M plan requires groundwater and surface water sampling to be conducted on a semiannual (spring and fall) basis for the first two years of monitoring; sampling may be reduced to annually if the data support the reduction. The semiannual samples were collected starting in June and December 2009. Results indicate that the cover system has minimized contaminant migration from contaminated soils to the groundwater. In addition, the total metals concentrations reported from both sampling events for the metal COCs arsenic, total chromium, and hexavalent chromium were nondetectable or below NYSDEC Groundwater Quality Standards and Guidance Values (GWQS/GVs).

As per the OM&M plan, semiannual inspection of the landfill was conducted concurrently with the sampling described above. Inspection reports submitted on February 5, 2010, indicated that the final cover system appears to be in good condition, with the gas-venting system intact and operational. Semiannual inspections will continue as part of the OM&M plan.

The ROD requires the implementation of institutional controls (ICs). The ICs involve filing of an Environmental Easement to restrict the use of on-site groundwater as a source of potable or process water (unless groundwater quality standards are met) and to restrict activities on the Site that could compromise the integrity of the cap.

The owner of record of the Site, Peter Cooper Corporation (PCC) is an inactive Delaware Corporation. A search for potential corporate successors was conducted and none were found. The PRPs consistent with the obligation to use reasonable best efforts to implement the ICs: Commenced an action in Supreme Court, Cattaraugus County, against the Peter Cooper Corporation to secure an Order from the court to provide the PRPs with access to the Site and to give permission to implement the ICs by filing the Easement in the Office of the Clerk of Cattaraugus County. The Court granted legal access to the Site on July 1, 2008. The ICs were filed with the Clerk's office on July 13, 2008 and a stamped copy was sent to EPA.

Five-Year Review

Hazardous substances remain at this Site above levels which would allow for unlimited use and unrestricted exposure. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, Section 121(c), EPA must conduct five-year reviews. The first Five-Year Review Report will be completed prior to July 2013, which is five years from the initiation of construction for the remedy.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA § 113(k) and Section 117. As part of the remedy selection process, the public was invited to comment on EPA's proposed remedies. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Public participation activities for this Site have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. The ROD was subject to a public review process. All other documents and information that EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories.

Determination That the Site Meets the Criteria for Deletion in the NCP

One of the three criteria for site deletion is when responsible parties or other persons have implemented all appropriate response actions required (40 CFR 300.425(e)(1)(I)). EPA, with the concurrence of the State of New York through NYSDEC, has determined that all required and appropriate response actions have been implemented by the responsible parties.

V. Deletion Action

The EPA, with concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 20, 2010, unless EPA receives adverse comments by September 7, 2010. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect, and EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 25, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for "Peter Cooper Corporation (Markhams)," "Winslow Township," "NY."

[FR Doc. 2010–19417 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

DATES: *Effective Date:* This rule is effective as of August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1624; *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(c) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The figures for 2010 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on August 3, 2010 (75 FR 45628).

In addition, LSC is publishing charts listing income levels that are 200% of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 200% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

LSC notes that these 2010 Income Guidelines are substantively unchanged from the 2009 Income Guidelines. This is because HHS' Poverty Guidelines for the remainder of 2010 are unchanged from the 2009 Poverty Guidelines which have been in place since last year.

List of Subjects in 45 CFR Part 1611

Grant programs—Law, Legal services.

■ For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Appendix A of part 1611 is revised to read as follows:

Appendix A of Part 1611

LEGAL SERVICES CORPORATION 2010 INCOME GUIDELINES *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$13,538	$16,913	$15,575
2	18,213	22,763	20,950
3	22,888	28,613	26,325
4	27,563	34,463	31,700
5	32,238	40,313	37,075
6	36,913	46,163	42,450
7	41,588	52,013	47,825
8	46,263	57,863	53,200
For each additional member of the household in excess of 8, add:	4,675	5,850	5,375

* The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$21,660	$27,060	$24,920
2	29,140	36,420	33,520
3	36,620	45,780	42,120
4	44,100	55,140	50,720
5	51,580	64,500	59,320
6	59,060	73,860	67,920
7	66,540	83,220	76,520
8	74,020	92,580	85,120
For each additional member of the household in excess of 8, add:	7,480	9,360	8,600

Mattie Cohan,

Senior Assistant General Counsel.

[FR Doc. 2010–19449 Filed 8–5–10; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 04–258; RM–11000; RM–11149; DA 10–1194]

FM Table of Allotments, Boulder Town, Levan, Mount Pleasant, and Richfield, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for partial reconsideration, granted; petition for reconsideration, denied.

SUMMARY: The Audio Division grants a Petition for Partial Reconsideration filed by Sanpete County Broadcasting, licensee of Station KLGL(FM), Richfield, Utah. In so doing, the staff reinstates and grants Sanpete's Counterproposal to reallot and change the community of license of Station KLGL(FM) from Richfield to Mount Pleasant, Utah. The Audio Division also denies a Petition for Reconsideration filed by Micro Communications, Inc., licensee of Station KCFM, Levan, Utah, and affirms the dismissal of Micro's Petition for Rule Making on technical grounds. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MB Docket No. 04–258, adopted June 25, 2010, and released June 29, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's Web site, *http://www.bcpiweb.com.*

The *Report and Order* in this proceeding had denied the counterproposal of Sanpete's predecessor in interest to reallot and change the community of license of its Station KLGL(FM) from Channel 229C at Richfield, Utah, to Channel 229C at Mount Pleasant, Utah, because the proposed transmitter site was unavailable due to its location in a national forest. *See* 71 FR 29886 (May 24, 2006). The counterproposal was also denied because it would create "white" and "gray" loss areas of 1,103 and 1,057 persons, respectively. The Memorandum Opinion and Order grants the Sanpete Counterproposal because Sanpete demonstrated that its proposed transmitter site is not located in the Mani-La National Forest. Likewise, Sanpete showed that its proposal would not create any "white" loss area. Rather the counterproposal would create a "gray" loss population of 1,057, but the staff found that this "gray" loss population was outweighed by the provision of a first local service to a community with a population of 2,707.

The reference coordinates for Channel 229C at Mount Pleasant, Utah, are 39–37–52 NL and 111–19–47 WL. Sanpete's Counterproposal was formerly a rule change to Section 73.202(b), the FM Table of Allotments. As a result of changes to the Commission's processing rules, modifications of FM channels for existing stations are no longer listed in Section 73.202(b) and are instead reflected in the Media Bureau's Consolidated Data Base System (CDBS). *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services,* Report and Order, 71 FR 76208 (December 20, 2006). The CDBS will reflect Channel 229C at Mount Pleasant, Utah, as the reserved assignment of Station KLGL in lieu of Channel 229C at Richfield.

Micro's rule making petition had proposed the substitution of FM Channel 229C for Channel 244C at Levan, Utah, and the modification of its Station KCFM license to specify operation on Channel 229C. To accommodate this substitution, Micro had proposed to substitute Channel 244C for Channel 229C at Richfield, Utah, and to modify the license for Station KLGL(FM), accordingly. The Memorandum Opinion and Order affirmed the dismissal of Micro's rule making petition because it was technically defective at the time it was filed. Specifically, Station KLGL had both a license and a construction permit at the time that the rulemaking petition was filed, and the proposed Channel 244C at the construction permit site at Richfield was short-spaced to two vacant allotments at Beaver, Utah, and Mesquite, Nevada.

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 2010–19456 Filed 8–5–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2010–0075]

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment.

SUMMARY: This document corrects several cross-references in the agency's regulation exempting specified modifications for handicapped persons from the "make inoperative" prohibition of the National Traffic and Motor Vehicle Safety Act. This action responds to a letter from the National Mobility Equipment Dealers Association to correct the regulation.

DATES: This rule is effective September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Shelley Bolbrugge, NHTSA Office of Crash Avoidance Standards, NVS–123 (telephone 202–366–9146, fax 202–493–2739), or Deirdre Fujita, NHTSA Office of Chief Counsel, NCC–112 (telephone 202–366–2992, fax 202–366–3820). The mailing address for these officials is: NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

On September 26, 2008, the National Mobility Equipment Dealers Association (NMEDA) wrote to NHTSA requesting that the agency correct certain references in 49 CFR Part 595 Subpart C, "Make Inoperative Exemptions, Vehicle Modifications to Accommodate People with Disabilities." This regulation sets forth exemptions from the "make inoperative" provision (49 U.S.C. 30122(c)) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 301, "Safety Act") to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain Federal motor vehicle safety standards (FMVSSs) when the vehicles are modified to be used by persons with disabilities. Modifiers are exempted from the make inoperative provision of the Safety Act to the extent that the modifications affect the vehicle's compliance with the FMVSSs specified in 49 CFR 595.7(c).

Since the time that 49 CFR part 595 subpart C was issued in 2001, various standards referenced in 595.7(c) have been amended, some in a way that affected the numbering of the paragraphs in the standards. Because conforming changes were not always made to 595.7(c) to reflect the renumbered standard, some of the references in section 595.7(c) are outdated and incorrect. NMEDA asks NHTSA to address these incorrect references in 595.7(c).

This document makes the necessary corrections. There is no safety impact associated with this amendment. After reviewing the NMEDA letter, we have determined that references to FMVSS No. 101, *Controls and displays,* FMVSS No. 114, *Theft protection,* and FMVSS No. 208, *Occupant crash protection,* are in need of correction. The regulation is amended such that its references are aligned with FMVSS No. 101 as amended on August 17, 2005 (70 FR 48305) and on May 15, 2006 (71 FR 27971), with FMVSS 114 as amended on April 7, 2006 (71 FR 17752), and with FMVSS No. 208 as amended on January 6, 2003 (68 FR 513). We are also correcting the agency's address in § 595.6(a).

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

■ Accordingly, 49 CFR Part 595 is corrected by making the following correcting amendments:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 1. The authority citation for Part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. The introductory text of paragraph (a) of § 595.6 is revised to read as follows:

§ 595.6 Modifier identification.

(a) Any motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7 shall furnish the information specified in paragraphs (a)(1) through (3) of this section to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

* * * * *

■ 3. Section 595.7 is amended by revising paragraphs (c)(1), (c)(3), and (c)(14) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c)(1) 49 CFR 571.101, except for S5.2.1, S5.3.1, S5.3.4, S5.4.1, and S5.4.3 of that section.

* * * * *

(3) S5.1.2 and S5.1.3 of 49 CFR 571.114, in any case in which the original key locking system must be modified.

* * * * *

(14) S4.1.5.1(a)(1), S4.1.5.1(a)(3), S4.2.6.2, S5, S7.1, S7.2, S7.4, S14, S15, S16, S17, S18, S19, S20, S21, S22, S23, S24, S25, S26 and S27 of 49 CFR 571.208 for the designated seating position modified, provided Type 2 or Type 2A seat belts meeting the requirements of 49 CFR 571.209 and 571.210 are installed at that position.

* * * * *

Issued on: July 29, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–19344 Filed 8–5–10; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 75, No. 151
Friday, August 6, 2010

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–FV–10–0044; FV10–989–2 PR]

Raisins Produced From Grapes Grown In California; Use of Estimated Trade Demand to Compute Volume Regulation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on using an estimated trade demand figure to compute volume regulation percentages for 2010–11 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (committee). This proposed rule would provide parameters for implementing volume regulation, if necessary, for 2010–11 crop NS raisins for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

DATES: Comments must be received by August 23, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 989, both as amended, (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on using an estimated trade demand figure, rather than a computed trade demand figure, to calculate volume regulation percentages, if necessary, for 2010–11 crop NS raisins covered under the order. This proposed rule would provide parameters for implementing volume regulation, if necessary, for 2010–11 crop NS raisins for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market. This action was unanimously recommended by the committee at a meeting on May 13, 2010.

Volume Regulation Authority

The order provides authority for volume regulation, which is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a percentage of the California raisin crop may be sold by handlers to any market (free tonnage), while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the committee.

Reserve raisins are disposed of through various programs authorized under the order, consistent with § 989.67(b), which specifies that reserve raisins shall be disposed of by the committee: (1) By sale to handlers for sale in specified outlets or for resale to exporters for sale in export outlets; (2) By direct sale to any agency of the U.S. government for noncompetitive use; (3) By direct sale to foreign government agencies or foreign importers in approved countries; (4) by gift; and (5) By any other means consistent with the provisions of this section, and in outlets noncompetitive with those for free tonnage raisins. The reserve pool's equity holders (primarily producers) are the beneficiaries of reserve raisin sales.

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation for each crop year, which runs from August 1 through July 31. The committee must meet on or before

August 15 to review data regarding raisin supplies. At that time, the committee computes a trade demand for each varietal type of raisins for which a free tonnage percentage might be recommended. This is referred to as the "computed trade demand," and is defined in the order as 90 percent of the prior year's domestic and export shipments, minus the carry-in inventory from the prior year, plus the desirable carry-out inventory for the end of the current year.

Paragraph (e) of § 989.54 contains a list of factors that the committee must consider when computing volume regulation percentages. Subparagraph 4 of § 989.54(e) specifies that the committee shall consider the estimated trade demand for raisins in free tonnage outlets, if the estimated trade demand is different than the computed trade demand. Further, section 989.154(b) of the order's rules and regulations currently provides parameters for use of an estimated trade demand for the 2007–08 crop year.

Establishing Volume Regulation

On or before October 5, the committee must announce preliminary crop estimates and determine whether volume regulation is warranted for the various varietal types for which it computed trade demand. Preliminary volume regulation percentages are then computed to release 85 percent of the computed trade demand, if a field price for raisins has been established; or 65 percent of the trade demand, if no field price for raisins has been established. The field price, also known as the "free tonnage price" for raisins is the price that handlers pay producers for the free tonnage portion of their crop.

On or before February 15 of the following year, the committee must recommend final free and reserve percentages that will tend to release the full trade demand.

10 Plus 10 Offers

When volume regulation is in effect, the order also requires that two offers of reserve raisins be made to handlers for free use. These offers are known as the "10 plus 10" offers. Each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments. The order also specifies that 10 plus 10 raisins must be sold to handlers at the current field price plus a 3 percent surcharge and committee costs, which has historically added $100 to the field price cost of reserve raisins on a 10 plus 10 sale.

Development of Export Markets

Volume regulation has been utilized for NS raisins in all but 11 crop years since the order's inception in 1949. The procedures for determining volume regulation percentages have been modified over the years to address the changing needs of the industry. Volume regulation has historically been an effective tool for managing an oversupply of raisins. Further, the use of reserve pool raisins and their related industry promotional activities has assisted the industry in the development of the demand for California raisins in export markets.

TABLE 1—NATURAL SEEDLESS DELIVERIES, FIELD PRICES, AND DOMESTIC AND EXPORT SHIPMENTS IN NATURAL CONDITION TONS

Crop year	Deliveries	Field prices	Domestic shipments	Export shipments	Percent export
2009–10*	297,467	$1,323	157,278	127,793	45
2008–09	364,268	1,310	200,775	131,587	40
2007–08	329,288	1,210	201,355	148,243	42
2006–07	282,999	1,210	203,889	109,727	35
2005–06	319,126	1,210	195,822	102,632	34
2004–05	265,262	1,210	205,002	112,996	36
2003–04	296,864	810	191,376	112,860	37
2002–03	388,010	745	189,160	108,480	36
2001–02	377,328	880	186,361	112,272	38
2000–01	432,616	877	185,429	109,598	37
1999–00	299,910	1,425	166,127	97,342	37
1998–99	240,469	1,290	181,666	115,234	39
1997–98	382,448	1,250	185,745	124,349	40
1996–97	272,063	1,220	198,167	117,719	37
1995–96	325,911	1,160	198,517	116,653	37
1994–95	378,427	1,160	199,760	119,968	38
1993–94	387,007	1,155	214,852	122,085	36

* 2009–10 data is for a partial crop year, from August 1, 2009, through May 2010.

The raisin industry uses various terms to describe the weight of raisins in a container. The term, "natural condition tons," as used in Table 1, is synonymous with "sweatbox tons," while "packed tons" consists of natural condition tons converted to a packed weight. "Packed tons" can be 5 to 10 percent lighter (5.188 percent has been established by the committee as appropriate for the 2009–10 crop year), due to the inherent loss of moisture, the removal of stems, branches, etc., as raisins move from the field to the packed box. This reduction in weight is referred to as "shrink." For convenience and consistency, tonnage is provided as "natural condition tons," unless specified as "packed tons."

In addition, data from the 1985–86 crop year through the 1992–93 crop year indicates that exports of California NS raisins averaged about 34 percent of the industry's total NS raisin shipments per year, excluding government purchases. Thus, according to the historical data and information from the sixteen years in the above table, the percentage of export shipments compared to total shipments has continued to increase overall, demonstrating the importance of the export market to the California raisin industry.

Export Replacement Offer

One market development program operated through reserve pools, the Export Replacement Offer (ERO), helps U.S. raisins to be price competitive in export markets. Prices in export markets are generally lower than in the domestic market. The ERO began in the early 1980's as a "raisin-back" program whereby handlers who exported California raisins could purchase, at a reduced price, reserve raisins for free

use. This effectively blended down the cost of the raisins that were exported, seeking to equate the cost of acquired free tonnage raisins with the reduced value of raisins in the export market. During the 1994–95 crop year, the NS raisin ERO was half raisin-back and half cash-back and changed in 1996 to a "cash-back" program, whereby exporting handlers could qualify for cash reimbursements from the reserve pool for their export shipments.

The ERO has been a cash-back program in all years since then, except for 2000, 2001, and a portion of 2002, 2008, and 2009. During 2000 and 2001 a raisin-back program was used and during 2002, 2008, and 2009 both "cash-back" and "raisin-back" programs were implemented. Assets for financing the cash-back program largely accrue from the 10 plus 10 sales of reserve raisins. Since 2005, an average of $60.6 million of reserve pool assets (cash and raisins) have been used to support exports of about 115,000 packed tons of NS raisins annually in both cash-back and raisin-back programs.

Current Industry Situation

Export shipments of California raisins have been extraordinarily high during the 2009–10 crop year due to light worldwide production of raisins, a weak U.S. dollar, and successful industry marketing efforts. These significantly-higher shipments will result in an unusually high computed trade demand for the 2010–11 crop year.

The committee is also concerned that the 2010–11 crop may be reduced because of a continuing trend of grapevine removals since 2004, at a rate of approximately 7,000 acres per year; unseasonable rain and cool temperatures this spring; and the potential for higher prices in the wine and juice markets, which compete for grapes with the raisin industry. In addition, the European Grape Vine Moth has recently been found in the Central Valley of California, a major and highly-concentrated growing area. This pest has the potential for significant grape losses, should it become established. Even without significant damage in the short-run, a 96-square-mile quarantine area has already been established, which currently restricts the movement of the grape crop out of those areas. The industry does not yet know the effects this or subsequent quarantines may have on raisins.

Thus, with the potential for a higher computed trade demand and a smaller crop, volume regulation may not be warranted for 2010–11 NS raisins, based on the order's computed trade demand formula, mandated in § 989.54(a).

The effective marketing of California raisins requires strategies and approaches which address both the domestic and the export markets. If a 2010–11 reserve pool is not established, the industry would not be able to continue the ERO program and support its export sales. The committee is concerned that the industry could lose one-third or more of its export market without an ERO program. Further, handlers who could not sell their raisins into the export market would likely sell their raisins into the domestic market. Annual domestic shipments of NS raisins for the past sixteen years have averaged about 194,000 tons. The committee is concerned that raisins necessarily diverted from the export market into the domestic market could create instability in the short term.

Implementing Volume Regulation To Maintain the ERO Under Adverse Trade Demand or Supply Situations

Based on the above-described considerations, the committee unanimously recommended using an estimated trade demand for the 2010–11 crop NS raisins to compute volume regulation percentages, creating a reserve if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand; provided that the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve shall be established if the final 2010–11 NS raisin crop estimate is less than 110 percent of the previous crop year's domestic shipments. At that level, the needs of the domestic market would be met, as would a portion of the export market, when combined with the available carry-in of raisins from the 2009–10 crop.

To illustrate how this would work, the committee would compute a trade demand for NS raisins on or before August 15. At that time, the committee would also announce its intention to use an estimated trade demand to compute volume regulation percentages, if the 2010–11 NS raisin crop estimate is at least 110 percent of the previous year's domestic shipments, but no more than 10 percent greater than the computed trade demand. An estimated trade demand would allow for the establishment of no more than a 10 percent reserve which would be used to fund the Export Replacement Offer (ERO) program.

Crop Estimate Is Less Than 110 Percent of the Previous Year's Domestic Shipments—No Regulation

Under the committee's proposal, if the 2010–11 crop estimate is less than 110 percent of the previous year's domestic shipments, no volume regulation would be recommended. With a crop estimate of 215,000 tons, for example, and an average of about 80,000 tons of NS raisins estimated to be carried forward from the 2009–10 crop year, a supply of approximately 295,000 tons of raisins could be available for the 2010–11 crop year. This is lower than the average annual NS raisin shipments from Table 1 of approximately 310,000 tons, excluding government purchases. With such an available supply, the committee believes that the industry's first priority would be to satisfy the needs of the domestic market, which absorbs an annual average of about 195,000 tons. Assuming that 195,000 tons were shipped domestically, there would be 100,000 tons available to ship into the export market.

Crop Estimate Equal to 110 Percent of the Previous Year's Domestic Shipments and No More Than 10 Percent Above the Computed Trade Demand—Volume Regulation

If the October 2010–11 crop estimate for NS raisins is 110 percent or more of the previous year's domestic shipments and no more than 10 percent above the computed trade demand, the committee would use an estimated trade demand figure to compute preliminary free and reserve percentages for the 2010–11 crop.

The committee would compute final free and reserve percentages no later than February 15. Under this proposal, if an estimated trade demand figure is used to compute those percentages, the final reserve percentage would not exceed 10 percent of the estimated crop. Producers would ultimately be paid the prevailing free-tonnage price for raisins on 90 percent of their crop—the free tonnage portion.

The reserve would be offered for sale to handlers in the 10 plus 10 offers. However, since the order specifies that each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments, under this situation, the available limited volume would not meet this requirement. In that instance, all of the raisins held in reserve would be made available to handlers for free use through the 10 plus 10 offers, nonetheless.

Under any other situations than those described herein, the committee would rely on the computed trade demand to

calculate volume regulation percentages.

Summary of the Proposed Regulation

It is anticipated that allowing the committee to use an estimated trade demand to compute volume regulation percentages for 2010–11 crop year NS raisins under adverse trade demand or supply situations would enable the industry to supply the domestic market and maintain a limited export program. The committee proposed the following criteria for establishing volume regulation for the 2010–11 crop year:

(1) If the crop estimate is below 110 percent of the previous year's domestic shipments, no volume regulation would be implemented. If this occurs, it is probable that the needs of the domestic market would be met first, but demand in the export markets would likely not be satisfied;

(2) If the crop is equal to 110 percent of the previous year's domestic shipments and no more than 10 percent above the computed trade demand, a small reserve pool could be established to allow the industry to not only satisfy the needs of the domestic market, but also maintain a portion of its export sales. By maintaining an ERO program, even at a reduced level, exporting raisin handlers could continue to be price competitive, sell their raisins abroad, and endeavor to maintain the export market on a long-term basis. The domestic marketing would remain stable because raisin supplies would be consistent, but not flooded with raisins that would normally be exported; and

(3) Under any other circumstances, the committee would utilize the computed trade demand.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, order, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 26 handlers of California raisins who are subject to regulation under the order and approximately 3,000 raisin producers in the regulated area. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those having annual receipts of less than $7,000,000, and small agricultural producers as those having annual receipts of less than $750,000. Based upon shipment data and a recent survey conducted by the committee, approximately 18 handlers and a majority of producers of California raisins may be classified as small entities.

This rule would revise § 989.154(b) of the order's administrative rules and regulations by establishing the parameters for using an estimated trade demand figure specified in § 989.54(e)(4) of the order to compute volume regulation percentages for the 2010–11 crop NS raisins. Section 989.154(b) would provide guidelines for the use of estimated trade demand in lieu of computed trade demand in certain situations for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

Regarding the impact of the action on producers and handlers, under the committee's proposal, if an estimated trade demand figure were used to compute volume regulation percentages, the final reserve percentage would compute to no more than 10 percent. Producers would thus be paid the free tonnage price for raisins for at least 90 percent of their crop. No more than 10 percent of their crop would go into a reserve pool. The free tonnage price for NS raisins for the past 17 years depicted on Table 1 has averaged $1,144 per ton.

Handlers, in turn, would purchase 90 percent of their raisins directly from producers at the free tonnage price for raisins, but would have to buy remaining raisins out of the committee's reserve pool at a higher price (field price plus 3 percent and committee costs). The 10 plus 10 price of NS reserve raisins has averaged about $100 higher than the free tonnage price for raisins for the past 5 years, or $1,353 per ton. Proceeds from the 10 plus 10 sales are used to support export sales.

While there may be some initial costs for both producers and handlers under the above scenario, the long-term benefits of this action are expected to outweigh the costs. The committee believes that with no reserve pool, and hence, no ERO program, export sales would decline. With no export program, handlers would necessarily divert raisins normally destined for export markets into the domestic market, which typically absorbs about 194,000 tons annually. Additional NS raisins sold into the domestic market could destabilize the industry's primary market in the short run.

Committee members have commented that once the industry's export markets are lost, it is difficult and costly to recover those sales in the short run. As noted previously, export shipments have increased over the past sixteen years to over 45 percent of all shipments.

Raisins are generally used as an ingredient in baked goods, cereals, and snacks. Typically, buyers prefer reliable and consistent supplies from year to year and from product to product. Once buyers lose their regular supplies and switch to different ingredients and/or sources, they may not switch back readily. Thus, the loss of a portion of the export markets could compound into greater losses long term.

Export markets for raisins are highly competitive. The U.S. and Turkey are the world's leading producers of raisins. Turkey exports approximately 76 percent of its total production, and represents an alternative source for raisin buyers. During the 2009–10 crop year, Turkish raisin production was 280,000 tons, down from 310,000 for the 2008–09 crop year. Exports of California NS raisins during the 2009–10 crop year were extraordinarily high due to marketing efforts by the handlers and the RAC, low worldwide production in other dried grape growing regions, the value of the dollar, and the high quality of California raisins.

Maintaining the industry's export markets would help the industry maximize its 2010–11 total shipments of NS raisins, and reduce the possibility of carrying forward large quantities of inventory into the 2011–12 crop year. If the industry is unable to maximize its 2010–11 shipments of NS raisins, carry-in inventory could be high. Reduced shipments and high carry-in would result in a lower computed trade demand figure for the 2011–12 crop year; and, ultimately, a lower free tonnage percentage. Since NS raisin producers benefit more from those raisins which are free tonnage, a lower free tonnage percentage would result in reduced returns to producers. If 2010–11 returns to producers are reduced, this, coupled with the risks of rain, labor shortages during harvest, and the unknown effects of the European Grape Vine Moth, may influence producers to sell their raisin-variety fresh grapes to alternate market outlets: fresh, wine, or juice concentrate markets. Additional supplies to those alternate market outlets have the potential to reduce returns, as well.

Alternatives to This Proposed Rule

The committee discussed alternatives to this change. One option considered was using one of the three prior year's domestic shipments to compute trade demand, pursuant to § 989.54(a) of the order. However, the order permits this only if the prior year's domestic shipments were limited due to crop conditions. Since 2009–10 shipments have increased, the committee concluded this option was not viable.

Another alternative considered was utilizing the computed trade demand formula in the order and using all available funds to support the ERO. However, the committee estimates that the funds remaining from the 2009–10 reserve pool would only support the ERO through August 2010, which would leave the industry without assets to support an ERO for eleven months of the season.

A third alternative considered was to maintain the existing language from § 989.154(b) and making it applicable to the 2010–11 crop year. (Section 989.154(b) currently authorizes the committee to use an estimated trade demand for the 2008–09 season only.) However, merely making a recommendation to change the applicable crop year did not address the potential needs of the industry. The existing language limited the committee by mandating that no reserve would be established if the 2010–11 crop estimate were less than 215,000 natural condition tons. After a series of discussions from two subcommittees, the committee determined that a more appropriate lower threshold for utilizing estimated trade demand would be 110 percent of the prior year's domestic shipments rather than a fixed quantity of 215,000 tons.

This proposed rule provides parameters for implementing volume regulation, if necessary, for 2010–11 crop NS raisins for the purposes of stabilizing the domestic market and maintaining a portion of the industry's export markets.

Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the committee's Rulemaking Work Group and the Administrative Issues Subcommittee each deliberated this issue at their meetings on May 11 and May 13, 2010, respectively, prior to the committee's meeting on May 13, 2010. All three meetings were widely publicized throughout the raisin industry, and all interested persons were invited to attend the meetings and encouraged to participate in subcommittee and committee deliberations on all issues. Like all subcommittee and committee meetings, the May 11 and 13, 2010, meetings were public meetings; and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBuinessGuide.*

Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this action, if adopted, should be in place by the beginning of the 2010–11 crop year, August 1. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

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

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.154, paragraph (b) is revised to read as follows:

§ 989.154 Marketing policy computations.

* * * * *

(b) *Estimated trade demand.* Pursuant to § 989.54(e)(4), estimated trade demand is a figure different than the trade demand computed according to the formula in § 989.54(a). The Committee shall use an estimated trade demand to compute preliminary and interim free and reserve percentages, or determine such final percentages for recommendation to the Secretary for the 2010–11 crop year of Natural (sun-dried) Seedless (NS) raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand: *Provided,* That the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve shall be established if the final 2010–11 NS raisin crop estimate is less than 110 percent of the previous crop year's domestic shipments.

Dated: August 2, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–19369 Filed 8–5–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

[NRC–2010–0194]

RIN 3150–AI12

Implementation Guidance for Physical Protection of Byproduct Material; Category 1 and Category 2 Quantities of Radioactive Material; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material. The NRC has prepared draft guidance to address implementation of the proposed regulations. The notice of availability for the guidance was published July 14, 2010. The public comment period on the guidance ends November 12, 2010. As part of the public comment process on the guidance, the NRC plans to hold two transcribed public meetings to solicit comments on the draft implementation guidance. The meetings are open to the public and all interested parties may attend. The first meeting

will be held at the Doubletree Hotel in Austin, Texas. The second meeting will be held at the NRC in Rockville, Maryland. During the comment period, comments may also be mailed to the NRC or submitted via fax.

DATES: September 1, 2010, from 8:30 a.m. to 5 p.m. in Austin, Texas and September 20, 2010, from 8:30 a.m. to 5 p.m. in Rockville, Maryland.

ADDRESSES: The September 1st meeting will be held at the Doubletree Hotel, 6505 Interstate Highway 35 North, Austin, Texas. The September 20th meeting will be held at the NRC Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail *Merri.Horn@nrc.gov* or Paul Goldberg, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7842, e-mail *Paul.Goldberg@nrc.gov*.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to obtain stakeholder comments on the draft implementation guidance for proposed 10 CFR part 37 Physical Protection of Byproduct Material. The proposed rule to which the guidance applies was published on June 15, 2010 (75 FR 33902) and the public comment period ends October 13, 2010. Documents related to the proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0120.

The availability of implementation guidance was noticed on July 14, 2010 (75 FR 40756) and the public comment period ends November 12, 2010. The implementation document provides guidance to a licensee or applicant for implementation of proposed 10 CFR part 37, Physical Protection of Byproduct Material, specifically Category 1 and Category 2 quantities of radioactive material. It is intended for use by applicants, licensees, Agreement States, and NRC staff. The document describes methods acceptable to the NRC staff for implementing proposed 10 CFR part 37. The approaches and methods described in the document are provided for information only. Methods and solutions different from those described in the document are acceptable if they meet the requirements in proposed 10 CFR part 37. The guidance is provided in the form of questions and answers on the provisions of the proposed rule. The draft implementation guidance document for proposed 10 CFR part 37 is available electronically under ADAMS Accession Number ML101470684, and can also be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0194.

AGENDA: Registration—8 a.m.–4:45 p.m.; Welcome and Introduction—8:30 a.m.; Meeting Ground Rules—8:45 a.m.; Discussion on Subpart B—8:50 a.m.; Discussion on Subpart C—10:45 a.m.; Discussion on Subpart D—1:30 p.m.; Part 37 Open Discussion—3:15 p.m.; Summary and Next Steps—4:45 p.m.

Attendees are encouraged to notify Amanda Noonan, telephone (301) 415–2551, e-mail *Amanda.Noonan@nrc.gov* to pre-register for the meetings. You will be able to register at the meetings, as well. To ensure that everyone who wishes has the chance to speak, we may impose a time limit on speakers.

Both oral and written comments on the implementation guidance will be accepted at the meetings. In addition, the staff will accept written comments on the proposed rule.

Dated at Rockville, Maryland, this 30th day of July 2010.

For the Nuclear Regulatory Commission.

Mark Thaggard,

Deputy Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–19408 Filed 8–5–10; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1213

RIN 2590–AA20

Office of the Ombudsman

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is seeking comment on a proposed regulation to implement section 1317(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(i)). The proposed regulation would establish within FHFA an Office of the Ombudsman, which would be responsible for considering complaints and appeals from the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (collectively, regulated entities), the Office of Finance, and any person that has a business relationship with a regulated entity or the Office of Finance, regarding any matter relating to the regulation and supervision of the regulated entities or Office of Finance by FHFA.

DATES: Written comments on the proposed regulation must be received on or before September 7, 2010. For additional information, *see* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed regulation, identified by regulatory information number "RIN 2590–AA20," by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA20" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include "RIN 2590–AA20" in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA20, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA20, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Sandy Comenetz, Executive Advisor to the Chief Operating Officer and Senior Deputy Director, (202) 414–3771, or Andra Grossman, Senior Counsel, (202) 343–1313 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed regulation and will take all comments into consideration before issuing the final regulation. Copies of all

comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (FHLBanks); and to ensure that they operate in a safe and sound manner; remain adequately capitalized; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and their respective authorizing statutes, as well as all rules, regulations, guidelines, and orders and carry out their missions through activities that are authorized by their respective statutes and are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)).

III. Proposed Regulation

Section 1105(e) of HERA amended section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) by requiring the Director of FHFA to establish, by regulation, an Office of the Ombudsman (Office). The Office is to be headed by an Ombudsman who is responsible for considering complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity on any matter relating to the regulation and supervision of a regulated entity. Section 1317(i) (12 U.S.C. 4517(i)) further provides that the regulation must specify the authority and duties of the Office. FHFA proposes this regulation to implement section 1317(i) (12 U.S.C. 4517(i)) by establishing the Office and setting forth the authorities and duties of the Ombudsman.

In developing this proposed regulation, FHFA considered the role, scope, and function of the ombudsman across the federal banking agencies and the rest of the federal government. FHFA found there was no one, uniform approach followed. The approach taken in this proposed regulation draws from these various practices.

The Office of Finance is a joint office of the FHLBanks that was established by a predecessor to FHFA. The Office of Finance is governed by a board of directors consisting of all of the FHLBank presidents and five independent members. Under the regulations of FHFA, the Office of Finance is subject to the same regulatory oversight authority and enforcement powers as are the FHLBanks and their respective directors, officers, and employees.[2] The Office of Finance is also subject to the cease-and-desist authority of FHFA and its directors, officers and management are subject to the removal and prohibition authority of FHFA.[3] Although the Office of Finance is not directly covered by the Safety and Soundness Act, it is subject to the Director's "general regulatory authority" under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)), as amended by HERA. The Director is required to exercise that authority as necessary to ensure that the purposes of the Safety and Soundness Act, the authorizing statutes, and other applicable law are carried out. Based on its general regulatory authority over the Office of Finance, FHFA is proposing that this regulation apply to the Office of Finance.

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the FHLBanks and the Enterprises with respect to the FHLBanks' cooperative ownership structure, liquidity mission, affordable housing and community development mission, capital structure, and joint and several liabilities. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed regulation, the Director considered the differences between the FHLBanks and the Enterprises as they relate to the above factors. The Director believes that none of the unique factors relating to the FHLBanks warrants establishing different treatment under the proposed regulation. Nonetheless, the Director requests comments about whether it would be appropriate to include in a final rule any provisions relating to the differences between the FHLBanks and the Enterprises.

IV. Section-by-Section Analysis

Section 1213.1 Purpose and Scope

Proposed § 1213.1 would provide that the purpose of the proposed part is to establish the Office under section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) and to set forth the authorities and duties of the Ombudsman. The proposed part would also apply to complaints and appeals regarding any matter relating to the regulation and supervision of any regulated entity or the Office of Finance. The proposed establishment of the Office would not alter or limit any other right or procedure associated with appeals, complaints, or administrative matters submitted by a person regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance under any other law or regulation.

Section 1213.2 Definitions

This proposed section would set forth definitions applicable to this part.

Business relationship would mean a relationship or potential relationship between a person and a regulated entity or the Office of Finance that involves the provision of goods or services. The term *business relationship* would not mean a relationship between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

Director would mean the Director of FHFA or his or her designee.

FHFA would mean the Federal Housing Finance Agency.

Office of Finance would mean the Office of Finance of the Federal Home Loan Bank System.

Person would mean an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance, or that represents directly or indirectly the interests of a person that has a business relationship with a regulated entity or the Office of Finance. The term *person* would not include an individual borrower.

Regulated entity would mean the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, or any Federal Home Loan Bank. The term *regulated entities* would

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

[2] 12 CFR 1273.4 and 1273.7.

[3] 12 U.S.C. 4631(a) and 4636a(a).

mean, collectively, the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, and the Federal Home Loan Banks.

Safety and Soundness Act would mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, (12 U.S.C. 4501 *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

Section 1213.3 Authorities and Duties of the Ombudsman

Proposed § 1213.3 would provide that the Office be headed by an Ombudsman. The Ombudsman would be required to consider complaints or appeals submitted by a regulated entity, the Office of Finance, or any person regarding any matter relating to the regulation and supervision of the regulated entity or the Office of Finance by FHFA.

In considering any complaint or appeal, the proposed section would authorize the Ombudsman to (i) conduct inquiries and make findings of fact and nonbinding recommendations to the Director concerning the complaint or appeal, and (ii) act as a facilitator and mediator for the resolution of the complaint or appeal. Proposed duties of the Ombudsman would be to (i) establish procedures for carrying out the functions of the Office, (ii) establish and publish procedures for the submission of complaints and appeals, and (iii) report annually to the Director on the activities of the Office, or more frequently, as determined by the Director.

Section 1213.4 Complaints and Appeals by a Regulated Entity or the Office of Finance

Proposed § 1213.4 would provide that FHFA encourages informal resolution of matters in dispute between a regulated entity or the Office of Finance and FHFA. If a matter could not be resolved informally, a regulated entity or the Office of Finance may submit a complaint or appeal. As proposed, any regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance that is not a matter subject to appeal. Proposed § 1213.4 would provide that the Ombudsman may further define what matters are subject to complaint.

Proposed § 1213.4 would further provide that any regulated entity or the Office of Finance may submit an appeal in accordance with procedures established by the Ombudsman on any final written regulatory or supervisory conclusion, decision, or examination rating by FHFA. The proposed section also would provide that the Ombudsman may further define what matters are subject to appeal. Section 1213.4, as proposed would provide that for matters for which there is an existing avenue of appeal or for which there is another forum, and non-final decisions or conclusions may not be appealed to the Ombudsman. Such matters would include, but would not be limited to, appointments of conservators or receivers, preliminary examination conclusions, formal enforcement decisions, formal and informal rulemakings, Freedom of Information Act appeals, final FHFA decisions subject to judicial review, and matters within the jurisdiction of the FHFA Inspector General. In addition, the proposed section would provide that the Ombudsman may further define what matters are not subject to appeal.

Finally, proposed § 1213.4 would provide that an appeal would not excuse a regulated entity or the Office of Finance from complying with any regulatory or supervisory decision while the appeal is pending. The proposed section would provide that the Director, upon written request, may relieve a regulated entity or the Office of Finance of the obligation to comply with a regulatory or supervisory decision or action while an appeal is pending.

Section 1213.5 Complaints by a Person

Proposed § 1213.5 would allow any person to submit a complaint in accordance with procedures established by the Ombudsman regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance. The proposed section also would provide that the Ombudsman may further define what matters are subject to complaints.

Section 1213.6 No Retaliation

Under proposed § 1213.6, neither FHFA nor any FHFA employee would be permitted to retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal. The proposed section would require the Ombudsman to receive and address complaints of retaliation and investigate the basis of the alleged retaliation. Upon completion of the investigation, the Ombudsman would report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

Section 1213.7 Confidentiality

Proposed § 1213.7 would require the Ombudsman to ensure that safeguards exist to preserve confidentiality. If a party requests that information and materials remain confidential, the Ombudsman would be required not to disclose the information and materials, without approval of the party, except to appropriate reviewing or investigating officials, or as required by law. The proposed section notes that the resolution of certain complaints (such as complaints of retaliation against a regulated entity or the Office of Finance) may not be possible if the identity of the party remains confidential and thus would require the Ombudsman to discuss with the party the circumstances limiting confidentiality.

Regulatory Impact

Paperwork Reduction Act

The proposed regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA hereby certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1213

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511(b)(2), 4517(i), and 4526, the Federal Housing Finance Agency proposes to amend Chapter XII of Title 12, Code of Federal Regulations, by adding a new part 1213 to subchapter A to read as follows:

PART 1213—OFFICE OF THE OMBUDSMAN

Sec.
1213.1 Purpose and scope.
1213.2 Definitions.
1213.3 Authorities and duties of the Ombudsman.
1213.4 Complaints and appeals by a regulated entity or the Office of Finance.
1213.5 Complaints by a person.
1213.6 No retaliation.
1213.7 Confidentiality.

Authority: 12 U.S.C. 4511(b)(2), 4517(i), and 4526.

§ 1213.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish within FHFA the Office of the Ombudsman (Office) under section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) and to set forth the authorities and duties of the Ombudsman.

(b) *Scope.*—(1) This part applies to complaints and appeals regarding any matter relating to the regulation and supervision of any regulated entity or the Office of Finance.

(2) The establishment of the Office does not alter or limit any other right or procedure associated with appeals, complaints, or administrative matters submitted by a person regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance under any other law or regulation.

§ 1213.2 Definitions.

For purposes of this part, the term:

Business relationship means a relationship or potential relationship between a person and a regulated entity or the Office of Finance that involves the provision of goods or services. The term *business relationship* does not mean a relationship between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

Director means the Director of FHFA or his or her designee.

FHFA means the Federal Housing Finance Agency.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System.

Person means an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance, or that represents directly or indirectly the interests of a person that has a business relationship with a regulated entity or the Office of Finance. The term *person* does not include an individual borrower.

Regulated entity means the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, or any Federal Home Loan Bank. The term *regulated entities* means, collectively, the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

§ 1213.3 Authorities and duties of the Ombudsman.

(a) *General.* The Office shall be headed by an Ombudsman, who shall consider complaints or appeals submitted by a regulated entity, the Office of Finance, or any person regarding any matter relating to the regulation and supervision of the regulated entities or the Office of Finance by FHFA. In considering any complaint or appeal submitted under this part, the Ombudsman may:

(1) Conduct inquiries and make findings of fact and nonbinding recommendations to the Director concerning the complaint or appeal, and

(2) Act as a facilitator and mediator for the resolution of the complaint or appeal.

(b) *Other duties.* The Ombudsman shall:

(1) Establish procedures for carrying out the functions of the Office.

(2) Establish and publish procedures for the submission of complaints and appeals, and

(3) Report annually to the Director on the activities of the Office, or more frequently, as determined by the Director.

§ 1213.4 Complaints and appeals by a regulated entity or the Office of Finance.

(a) *Informal resolution.* FHFA encourages informal resolution of matters in dispute between a regulated entity or the Office of Finance and FHFA. If a matter cannot be resolved informally, a regulated entity or the Office of Finance may submit a complaint or appeal, as appropriate, to the Ombudsman for consideration under procedures established by the Ombudsman.

(b) *Complaints.*—(1) *General.* Any regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman.

(2) *Matters subject to complaint.* A regulated entity or the Office of Finance may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance that is not a matter subject to appeal. The Ombudsman may further define what matters are subject to complaint.

(c) *Appeals.*—(1) *General.* Any regulated entity or the Office of Finance may submit an appeal in accordance with procedures established by the Ombudsman.

(2) *Matters subject to appeal.* A regulated entity or the Office of Finance may submit an appeal on any final written regulatory or supervisory conclusion, decision, or examination rating by FHFA. The Ombudsman may further define what matters are subject to appeal.

(3) *Matters not subject to appeal.* Matters for which there is an existing avenue of appeal or for which there is another forum, and non-final decisions or conclusions may not be appealed. Such matters include but are not limited to appointments of conservators or receivers, preliminary examination conclusions, formal enforcement decisions, formal and informal rulemakings, Freedom of Information Act appeals, final FHFA decisions subject to judicial review, and matters within the jurisdiction of the FHFA Inspector General. The Ombudsman may further define what matters are not subject to appeal.

(4) *Effect of initiating an appeal.* An appeal under this section does not excuse a regulated entity or the Office of Finance from complying with any regulatory or supervisory decision while the appeal is pending. The Director, upon written request, may relieve a regulated entity or the Office of Finance of the obligation to comply with a regulatory or supervisory decision or action while the appeal is pending.

§ 1213.5 Complaints by a person.

(a) *General.* Any person may submit a complaint in accordance with procedures established by the Ombudsman.

(b) *Matters subject to complaint.* A person may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance. The Ombudsman may further define what matters are subject to complaints.

§ 1213.6 No retaliation.

Neither FHFA nor any FHFA employee may retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal under this part. The Ombudsman shall receive and address

complaints of retaliation. Upon receiving a complaint, the Ombudsman shall investigate the basis of the alleged retaliation. Upon completion of the investigation, the Ombudsman shall report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

§ 1213.7 Confidentiality.

The Ombudsman shall ensure that safeguards exist to preserve confidentiality. If a party requests that information and materials remain confidential, the Ombudsman shall not disclose the information and materials, without approval of the party, except to appropriate reviewing or investigating officials, or as required by law. However, the resolution of certain complaints (such as complaints of retaliation against a regulated entity or the Office of Finance) may not be possible if the identity of the party remains confidential. In such cases, the Ombudsman shall discuss with the party the circumstances limiting confidentiality.

Dated: August 1, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–19424 Filed 8–5–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–17–000]

Demand Response Compensation in Organized Wholesale Energy Markets

AGENCY: Federal Energy Regulatory Commission.

ACTION: Supplemental Notice of Proposed Rulemaking and Notice of Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission is issuing a Supplemental Notice of Proposed Rulemaking (NOPR) and Notice of Technical Conference to provide additional opportunity for comment on issues related to the March 18, 2010 NOPR, 75 FR 15362 (March 29, 2010), regarding the appropriate compensation to be paid to demand response resources in organized wholesale electric markets administered by Independent System Operators or Regional Transmission Organizations. The Commission proposed an approach for compensating demand response resources in order to improve the competitiveness of organized wholesale energy markets and thus ensure just and reasonable wholesale rates. The Supplemental NOPR seeks comment on whether the Commission should adopt requirements related to two issues addressed in comments: If the Commission were to adopt a net benefits test for determining when to compensate demand response providers, what, if any, requirements should apply to the methods for determining net benefits; and what, if any, requirements should apply to how the costs of demand response are allocated. The Commission invites all interested persons to submit comments in response to the issues discussed herein.

DATES: A technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, no later than 45 days following the publication of this document in the **Federal Register**. The exact date of the conference will be provided in a subsequent Commission publication in the **Federal Register**.

Comments on the NOPR will be due 30 days following the technical conference announced herein. The Commission will announce the comment close date in a subsequent publication in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

Agency Web Site: http://ferc.gov. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

David Hunger (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8148, *david.hunger@ferc.gov.*

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SUPPLEMENTARY INFORMATION:

Supplemental Notice of Proposed Rulemaking and Notice of Technical Conference

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Issued August 2, 2010.

1. In a Notice of Proposed Rulemaking (NOPR) issued in this proceeding on March 18, 2010 (March NOPR),[1] the Commission proposed to require Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs)[2] with tariff provisions allowing demand response[3] resources[4] to participate in wholesale energy markets by reducing consumption of electricity from expected levels in response to price signals, to pay those demand response resources, in all hours, the market price of energy (also referred to as the "locational marginal price" or "LMP") for such reductions. In light of matters elucidated in responsive comments to the March NOPR, the Commission seeks additional comments on whether the Commission should adopt requirements related to two issues: (1) If the Commission were to adopt a net benefits test for determining when to compensate demand response providers, what, if any, requirements should apply to the methods for

[1] Demand Response Compensation in Organized Wholesale Energy Markets, Notice of Proposed Rulemaking, 75 FR 15362 (March 29, 2010), 130 FERC ¶ 61,213 (March 18, 2010).

[2] The following RTOs and ISOs have organized wholesale electricity markets: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England, Inc. (ISO–NE); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).

[3] Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4) (2010).

[4] Demand response resource means a resource capable of providing demand response. 18 CFR 35.28(b)(5) (2010).

determining net benefits; and (2) what, if any, requirements should apply to how the costs of demand response are allocated. The Commission also directs staff to hold a technical conference on these issues no later than 45 days following publication of this notice in the **Federal Register**. The exact date of the technical conference will be provided in a subsequent notice.

I. Background

2. In the March NOPR, the Commission proposed to add section 35.18(g)(1)(v) to its regulations to establish a specific compensation approach for demand response resources participating in organized wholesale energy markets, i.e., the day-ahead and real-time markets administered by ISOs and RTOs. Under the proposed section, each Commission-approved ISO and RTO that has a tariff provision providing for participation of demand response resources in its organized wholesale energy market would pay demand response resources, in all hours, the market price for energy, i.e., the LMP,[5] for demand reductions made in response to price signals.[6]

3. Numerous comments were filed in response to the NOPR, many of which support the proposed demand response compensation level.[7] However, other comments support payment of LMP only when the benefits of demand response compensation outweigh the costs of paying demand response resources, as determined by some type of net benefits test.[8] Still other comments argue that, in order to determine the justness and reasonableness of the proposed compensation level, the corresponding cost allocation must be considered.[9] More specifically, these comments raise concerns regarding how the costs associated with direct payment of LMP for demand response will be allocated, or assigned, within an ISO or RTO. Several commenters assert that the issues of cost allocation and net benefits are inherently linked, so that the Commission must address both issues together.[10] Comments regarding net benefits and cost allocation issues are discussed below.

II. Net Benefits

A. The March NOPR

4. In the March NOPR, the Commission proposed to require ISOs and RTOs to pay LMP to demand response providers in all hours, but the Commission also sought comment on, among other things, whether payment of LMP should indeed apply in all hours and, if not, the criteria that should be used for establishing the hours when LMP should apply.[11]

B. Comments

5. As noted above, numerous commenters, primarily industrial consumers and some consumer advocates, agree with the Commission's proposal to pay LMP to demand response providers in all hours.[12] They argue that, regardless of the hour or season, all consumers share in the benefits demand response resources provide, including lowering the clearing price.[13] They also argue that, regardless of the hour or season, both demand response providers and generators provide a comparable service in terms of balancing supply and demand and therefore should be paid on a comparable basis, i.e., LMP.[14]

6. At the same time, a diverse group of commenters maintain that paying LMP for demand response in all hours, including off-peak hours, might not result in net benefits to customers, because the payments might be substantially more than the savings created by reducing the clearing price at that time.[15] According to these commenters, net benefits are most likely to be positive and greatest when the supply curve is steepest, which typically occurs in highest-cost, peak hours.[16] Some commenters suggest that paying LMP in all hours might make more difficult, and less accurate, the establishment of baselines for measuring whether a demand response provider has, in fact, responded.[17]

7. Many commenters who oppose paying LMP in all hours for demand response suggest approaches, or net benefits tests, for determining when LMP should apply. These commenters state that the purpose of these tests would be to determine the point at which the incremental payment for demand response equals the incremental benefit of the reduction in load; payment of LMP would apply only

[5] LMP refers to the price calculated by the ISO or RTO at particular locations or electrical nodes within the ISO or RTO footprint and is used as the market price to compensate generators. There are variations in the way ISOs and RTOs calculate LMP; however, each method establishes the marginal value of resources in that market. Nothing here or in the March NOPR is intended to change ISO and RTO methods for calculating LMP.

[6] The proposed provision applies only to demand response acting as a resource in organized wholesale energy markets. The provision will not apply to demand response under programs that ISOs and RTOs administer for reliability or emergency conditions, such as, for instance, Midwest ISO's Emergency Demand Response; NYISO's Emergency Demand Response Program; PJM's Emergency Load Response; and ISO–NE's Real-Time 30–Minute Demand Response Program, Real-Time and 2–Hour Demand Response Program, and Real-Time Profiled Response Program. The provision also will not apply to compensation in ancillary services markets, which the Commission has addressed elsewhere. *See, e.g., Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. P 31,281 (2008) (Order No. 719).

[7] *See* Comments of Illinois Citizens Utility Board at 2; Comments of Industrial Energy Consumers of America at 3; Comments of National Energy Marketers Association at 3–4; Comments of National League of Cities; Comments of New Jersey Board of Public Utilities at 2; Comments of North America Power Partners at 4; Comments of Pennsylvania Department of Environmental Protection at 5; Comments of Price Responsive Load Coalition at 2; Comments of Schneider Electric USA at 2; Comments of Wal-Mart Stores, Inc. at 4; Comments of Virginia Committee for Fair Utility Rates at 7.

[8] *See generally,* Comments of New York State Consumer Protection Board; New England Consumer Advocates; Capital Power; Electric Power Supply Association (EPSA); Exelon Corporation (Exelon); PJM Power Providers Group; New England Conference of Public Utility Commissioners (NECPUC); Maryland Public Service Commission (Maryland Commission); New York State Public Service Commission (New York Commission); NSTAR Electric Company; National Grid USA (National Grid); PPL Parties; New England Public Systems; Viridity Energy, Inc.; and Charles Cicchetti.

[9] Comments of ISO–NE at 39–40. *See also,* Comments of American Electric Power Service Corp. at 6–10; Comments of CAISO at 6; Comments of Consolidated Edison Company at 2; Comments of Hess Corporation at 3; Comments of the Illinois Commerce Commission at 12; Comments of PJM at 8; Comments of Potomac Economics at 3; Comments of Massachusetts Attorney General and Maine Public Advocate at 11; Comments of Midwest ISO Transmission Owners at 5–6; Comments of Midwest TDUs at 13; Comments of Edison Electric Institute at 5; Comments of NECPUC at 12, 22; Comments of New England Consumer Advocates at 11; Comments of RRI Energy, Inc. at 6; Comments of San Diego Gas & Electric Co. at 3–4.

[10] As further addressed below, several commenters assert that the costs of demand response compensation should be borne by only those market participants determined to have benefitted from the subject load reduction, as determined by some type of net benefits test. *See, e.g.,* Comments of ISO–NE at 5–6; Comments of NECPUC at 22; Comments of PJM at 12–14; Comments of PJM Power Providers Group at 37–38.

[11] March NOPR, 130 FERC ¶ 61,213 at P 20.

[12] *See* Comments of Steel Manufacturers Association at 12; Comments of Consumer Demand Response Initiative at 12; Comments of Joint Consumer Advocates at 11–12.

[13] Comments of Alliance for Clean Energy New York at 2–3; Comments of American Chemistry Council at 3; Comments of American Forest & Paper Association at 3; Comments of Crane & Co. at 2–3; Comments of Industrial Energy Consumers of America at 2; Comments of Industrial Energy Consumers of Pennsylvania at 3; Comments of Madison Paper Industries at 2–3.

[14] Comments of Steel Manufacturers Association at 12.

[15] Comments of Capital Power Corporation at 5; Comments of PJM Power Providers Group at 5.

[16] Comments of NECPUC at 13.

[17] Comments of ISO–NE at 32–33; Comments of California Department of Water Resources at 11; Comments of National Grid USA at 8.

up to that point.[18] To achieve that end, some comments advocate a net benefits trigger based on a particular price or period of hours.[19] While some proposals would utilize a static bid threshold, such as $75/MWh,[20] other proposals would utilize a dynamic bid threshold, which could be based upon fuel prices and heat rates of marginal generation.[21] Still other commenters urge compensating demand response during an ISO- or RTO-defined period of critical high-cost hours in which it is cost-effective to pay the full LMP.[22] In addition to advancing net benefits tests, some commenters suggest implementation of an ISO- or RTO-developed mechanism to determine whether a net customer benefit would occur in advance of dispatch.[23] Some commenters, however, state that it would be difficult to prescribe by regulation the hours in which demand response provides net benefits because system conditions and load patterns change across seasons and over time.[24]

C. Discussion

8. Due to matters raised in responsive comments to the March NOPR, the Commission seeks further information regarding the net benefits issue. Accordingly, the Commission seeks additional comments and directs staff to hold a technical conference regarding various net benefits tests.[25] Specifically, the Commission seeks comment on the following issues, as well as any other issues:

(1) Some commenters address the need for a net benefits test. Address why the Commission should adopt a net benefits test for determining demand response compensation, and what the objectives of any such test would be.

(2) How to define benefits, including whether the benefits associated with demand response should account only for lower market-clearing prices in the day-ahead and real-time markets or should also include consideration of operational benefits *(e.g.,* lower reserve requirements), societal benefits or another measure.

(3) In addition to the payments received from the wholesale market, what are the costs demand response providers and load serving entities incur and should these be included for purposes of a net benefits test.

(4) How to identify the beneficiaries of demand response, and how the allocation of costs related to demand response compensation affect the beneficiaries, if at all.

(5) Whether any net benefits methodology adopted should be the same for all ISOs and RTOs or whether the individual circumstances or configuration of each ISO and RTO would support a different net benefits methodology.

(6) Proposed methodologies for implementing a net benefits test. Comments also should consider whether a net benefits threshold should be established up front based on static measures, such as a specific price or number of peak hours, or established on a dynamic basis, such as a price threshold based on a pre-set heat rate and daily updated fuel price; and similarly, whether the net benefits should be an explicit test run by the ISO or RTO either after bids have been received or each hour prior to accepting demand response bids. Comments should also describe the advantages and limitations of any proposed net benefits methodologies.

III. Cost Allocation

A. Comments

9. Comments concerning cost allocation essentially ask how the proposed demand response compensation level will be funded.[26] These commenters argue that, if not structured correctly, demand response compensation methodologies can increase, rather than decrease costs to end-users.[27] Some commenters further contend that requiring payment of LMP for demand response will require ISOs and RTOs to reopen cost allocation issues that have previously been settled based on varying ISO- and RTO-specific demand response compensation levels.[28] Additional commenters assert that demand response compensation and a method for allocating the associated costs are so inextricably entwined that the two issues must be simultaneously addressed as part of an integrated demand response regime.[29]

10. Another group of commenters endorse the position that demand response compensation and cost allocation are necessarily related, but they contend that resolution of cost allocation issues can await the final rule on demand response compensation. These commenters maintain that any cost allocation approach will depend on the outcome of the final demand response compensation rule[30] and, in any case, should first be addressed through stakeholder discussions at the regional level.

11. Several commenters advocate a specific approach or discuss the pros and cons of alternative approaches for allocating the costs associated with demand response compensation. Potential approaches raised in comments include:

(1) Allocating the costs across the entire relevant ISO or RTO market, based upon the rationale that there are system-wide benefits to demand response, including reducing the market price for energy.[31] Conversely, some commenters argue that, while this approach might increase the amount of demand response provided to the market, it might also result in some market participants paying costs associated with demand response for which they do not receive equivalent benefit.[32]

(2) Allocating the costs to only the load-serving entity of record, i.e., the load-serving entity that would have served the load providing the demand response. According to commenters, this option assumes that the deemed full benefit of demand response is only received by the load-serving entity of record and that demand response does

[18] Comments of New England Consumer Advocates at 11; Comments of NYSCPB at 5; Comments of National Grid at 4–5.

[19] For example, National Grid states that the threshold could be triggered by a particular price on the supply offer curve at which the additional cost of paying LMP to demand response resources is most likely to be outweighed by LMP reductions in the wholesale energy market as a result of the demand reductions produced by these resources. Comments of National Grid at 6.

[20] Comments of the New York Commission at 10. According to the New York Commission, a static bid threshold helps prevent demand response providers from gaming the system by seeking compensation for reducing electricity consumption for reasons other than market prices, but can also limit participation in a demand response program because prices might not exceed the threshold on a consistent basis.

[21] Comments of National Grid at 6; Comments of the New York Commission at 10; Comments of Viridity at 24.

[22] Comments of the Maryland Commission at 4–5.

[23] Comments of NYSCPB at 5.

[24] Midwest ISO Transmission Owners at 16.

[25] As noted above, the exact date of the technical conference will be provided in a subsequent notice and will be no later than 45 days following publication of this notice in the **Federal Register**.

[26] ISO–NE Comments at 5, 40; Comments of PJM at 8; Comments of Potomac Economics at 3.

[27] Comments of Massachusetts Attorney General and Maine Public Advocate at 11 (arguing that spreading the costs of demand response over a smaller amount of load is cost-effective only so long as the remaining load pays a lower price than it would have paid if the demand response had not participated).

[28] Comments of Midwest TDUs at 13.

[29] *Id.;* Comments of ISO–NE at 4–5; Comments of Edison Electric Institute (EEI) at 5; Comments of Charles Cicchetti at 26–27; Comments of CAISO at 6.

[30] Comments of New England Consumer Advocates at 11.

[31] *See* Comments of NECPUC at 22.

[32] Comments of Midwest ISO Transmission Owners at 5.

not impact other load-serving entities across the ISO or RTO.[33]

(3) Uplifting the costs locally to all load-serving entities within the zone impacted by the demand response reduction, based on a load ratio share. Commenters assert that this approach theoretically allocates the cost of demand response compensation to only those load-serving entities that benefitted from the demand response provided.[34]

(4) Recovering the costs through a surcharge added to the LMP for customers purchasing from the relevant energy market in the hour when the demand response resource is committed or dispatched. The rationale for this approach is that it allocates the costs of demand response resource procurement on the basis of cost-causation, *i.e.,* demand response resource costs are allocated directly to those energy market consumers who benefitted from the demand response resource provided. To implement this proposal, an adjustment to the market price paid by customers would be calculated.[35]

(5) Utilizing a hybrid approach, in a manner intended to minimize cost impacts on final customers.[36] Hybrid approaches include splitting the costs between load-serving entities and transmission owners,[37] and allocating part of the costs to the demand response provider's load-serving entity and part to all of the load-serving entities in the zone where the load reduction occurred, based on a load ratio share.[38]

B. Discussion

12. From the comments received, issues concerning cost allocation may be integrally related to the proposal relating to demand response compensation, and we believe such issues should be explored further. In addition, the diversity of comments relating to cost allocation leave open the question of whether a singular cost allocation approach should be determined by the Commission for all ISOs and RTOs or whether differing cost allocation approaches should be developed regionally and reviewed by the Commission on an ISO- and RTO-specific basis. Accordingly, the Commission seeks additional comments on whether the Commission should consider a generic approach to allocating the costs of demand response compensation required by the final rule in this proceeding, and if so, what approach the Commission should adopt. Such issues also will be explored at the staff technical conference. Specifically, the Commission seeks comment on the following issues, as well as any other issues:

(1) Whether standardizing demand response compensation among ISOs and RTOs requires simultaneous standardization of a method for allocating the costs associated with such compensation. In addition, whether standardizing demand response compensation among ISOs and RTOs requires consideration of corresponding settlements and other impacts associated with the compensation mechanism.

(2) If the Commission standardizes an approach for allocating the costs associated with requiring payment for demand response, what type of approach is appropriate. Comments should address the specific approaches delineated above, and may address other broad principles the Commission could use to determine the cost allocation method.

(3) How the use of a net benefits test would affect the need for and methodologies for determining cost allocation.

IV. Technical Conference

13. The exact date of the Commission staff technical conference directed herein will be provided in a subsequent notice and will be no later than 45 days following publication of this notice in the **Federal Register**. The conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to participate in the conference.

14. Those interested in speaking at the conference should notify the Commission by August 10, 2010 by completing an online form describing the topics that they will address: *http://www.ferc.gov/whats-new/registration/demand-RM10-17-000-speaker-form.asp.* Due to time constraints, we may not be able to accommodate all individuals interested in speaking, so multiple persons sharing the same position are encouraged to have one representative speak on their behalf. A detailed agenda, including panel speakers, will be published at a later date.

15. The technical conference will be transcribed. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. ((202) 347–3700 or 1–800–336–6646). The transcript will be available for free on the Commission's eLibrary system and on the Calendar of Events approximately one week after the conference.

16. A free webcast of the technical conference directed herein will be available. Anyone with Internet access interested in viewing this conference can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating the appropriate event in the Calendar. The events will contain a link to the applicable webcast option. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

17. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call 202 502–8659.

18. Commission 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 (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

V. Comment Procedures

19. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 30 days following the technical conference announced above. Comments must refer to Docket No. RM10–17–000, and must include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address.

20. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's

[33] Comments of PJM at 15.

[34] Comments of PJM at 14; Comments of NECPUC at 22; Comments of Midwest ISO Transmission Owners at 6.

[35] Comments of NECPUC at 22, 23.

[36] Comments of ISO–NE at 40.

[37] ISO–NE suggests charging the difference between LMP and the generation (or "G") portion of the retail rate (*i.e.,* LMP–G) to the load-serving entity that is providing the energy, and charging the remainder (*i.e.,* "G") to network load, which would be billed to transmission owners. Comments of ISO–NE at 5.

[38] As described by PJM, the "[load-serving entity] of record will receive a direct allocation of direct payments made for the demand response MWh reduction multiplied by the difference between the appropriate wholesale market price and the retail rate, and the cost associated with the MWh reduction multiplied by the retail rate allocated to all [load-serving entities] in the zone where the load reduction occurred based on a load ratio share." Comments of PJM at 10.

Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

21. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

22. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VI. Document Availability

23. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

24. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

25. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Moeller is concurring, in part and dissenting, in part with a separate statement attached.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

MOELLER, Commissioner, *concurring, in part and dissenting, in part:*

While I support the decision to supplement the record and convene a technical conference, for the reasons set forth in my concurring and dissenting statement on the NOPR that initiated this proceeding on March 18, I continue to concur and dissent, in part.

Philip D. Moeller,

Commissioner.

[FR Doc. 2010–19376 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–247C]

Schedules of Controlled Substances; Placement of 2,5-Dimethoxy-4-(n)-propylthiophenethylamine and N-Benzylpiperazine Into Schedule I of the Controlled Substances Act; Correction

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking: correction.

SUMMARY: The Drug Enforcement Administration (DEA) is correcting a notice of proposed rulemaking that appeared in the **Federal Register** of September 8, 2003. The proposed rule pertained to the scheduling of N-Benzylpiperazine (BZP), and contained an error regarding the potency of BZP relative to amphetamine. Although DEA used the correct figures in arriving at its scheduling determination, the agency is publishing this correction to provide an official statement of the actual figures. This correction does not address the scheduling of 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) which was also placed into schedule I as a result of the above cited rulemaking.

DATES: This correction is effective August 6, 2010 without further action.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

DEA is correcting an inadvertent error that occurred in a Notice of Proposed Rulemaking that scheduled the substance n-Benzylpiperazine (BZP) as a schedule I controlled substance. The Notice of Proposed Rulemaking, published on September 8, 2003 (68 FR 52872), proposed the control of BZP in schedule I of the Controlled Substances Act (CSA). The Final Rule, published on March 18, 2004 (69 FR 12794), finalized the placement of BZP in schedule I of the CSA.

Each of these rules contained a misstatement in the "Supplementary Information" section, with regard to the potency differences between BZP and amphetamine. In each rule, it was erroneously stated that BZP is 10 to 20 times more potent than amphetamine. In actuality, the converse is true (*i.e.,* BZP is 10 to 20 times less potent than amphetamine.) Therefore this Rulemaking corrects this misstatement in the Notice of Proposed Rulemaking. Under separate rulemaking, DEA is publishing a correction to the Final Rule, published March 18, 2004 (68 FR 12794).

DEA emphasizes that these errors were made solely in the rules as published in the **Federal Register**. Both DEA and the U.S. Department of Health and Human Services (HHS) considered the correct BZP potencies during their scheduling deliberations. The correct potencies were included in both the HHS scientific and medical evaluation document, and in DEA's scheduling document, which were used to make the determination for control. The public docket for BZP contains both of these review documents. In addition, DEA has already published on the agency's Web site the correct figures regarding relative potency.

The determination of control of BZP was made after consideration of all the available data and all eight factors and the criteria for schedule I as specified in 21 U.S.C. 811 and 812. The amphetamine-like property of BZP was determined following the collective review and consideration of all the available evidence including drug discrimination and self-administration and other information. These studies were briefly mentioned in the rules controlling BZP as a schedule I controlled substance and were discussed in detail in the scientific and medical evaluation and scheduling documents prepared by both HHS and DEA.

Although the potency difference between BZP and amphetamine was discussed in the rules proposing and

finalizing control of BZP as a part of the scientific background information, comparisons of potency differences are only one piece of background scientific data used to evaluate the abuse potential of drugs or other substances. In addition, potency itself is not one of the factors determinative of control. In fact, there are many examples of substances of varying potencies in each schedule, including stimulants and opiates previously scheduled under the CSA.

Even though the scheduling of BZP was finalized more than six years ago, DEA has been advised that in criminal proceedings, for sentencing purposes, courts have sought to ascertain: (1) The controlled substance, for which a sentencing guideline equivalency exists, that is the most closely analogous to BZP (which is d-amphetamine) and (2) the relative potency of BZP to that of the most analogous controlled substance. As indicated above, DEA has already published on the agency's Web site the correct figures regarding relative potency. This correction is being issued to provide such an official statement in the **Federal Register** for ease of reference by courts, litigants, and others who need the information for sentencing purposes.

This correction does not address the scheduling of 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) which was also placed into schedule I as a result of the above cited rulemakings.

Correction

Accordingly, the publication on Monday, September 8, 2003, of the Notice of Proposed Rulemaking [Docket No. DEA–247P], at 68 FR 52872 [FR Doc. 03–22684], is corrected in the preamble as follows:

On page 52873, in the third column, paragraph 2 is corrected to read as follows: "Consistent with the above-mentioned animal studies, it has been shown that BZP is about 20 times less potent than amphetamine in producing stimulant-like subjective and cardiovascular effects in humans (Bye C, *et al.,* Eur. J. Clin. Pharmacol. 6: 163–169, 1973). Similarly, Campbell and colleagues (Eur. J. Clin. Pharmacol. 6: 170–176, 1973), using a double-blind clinical study involving 18 subjects with a history of amphetamine dependence, reported that the nature and the timecourse of behavioral, autonomic and subjective effects following BZP administration are similar to those of amphetamine. BZP was found to be about 10 times less potent than amphetamine in this study."

Dated: July 9, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–19345 Filed 8–5–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 68

[Docket No. DoD–2009–OS–0034]

RIN 0790–AI50

Voluntary Education Programs

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes to implement policy, assign responsibilities, and prescribe procedures for the operation of voluntary education programs within DoD. Included are: Procedures for Service members participating in education programs; guidelines for establishing, maintaining, and operating voluntary education programs including, but not limited to, instructor-led courses offered on-installation and off-installation, as well as via distance learning; procedures for obtaining on-base voluntary education programs and services; minimum criteria for selecting institutions to deliver higher education programs and services on military installations; the establishment of a DoD Voluntary Education Partnership Memorandum of Understanding between DoD and educational institutions receiving tuition assistance payments; and procedures for other education programs for Service members and their adult family members.

DATES: Comments must be received by October 5, 2010.

ADDRESSES: You may submit comments, identified by docket number and or RIN 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 or Regulatory Information Number (RIN) 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: Kerrie Tucker at 703–602–4949, extension 117.

SUPPLEMENTARY INFORMATION:

Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

It has been certified that 32 CFR part 68 is a significant regulatory action. The rule has an annual effect on the economy of $100 million or more.

The rule does not:

(1) Adversely affect in a material way the economy; a section 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 this Executive Order.

Funding for Voluntary Education Programs is authorized by law and is subject to the availability of funds from each Service. Voluntary education programs include tuition assistance (per section 2007 of title 10, United States Code), which is administered uniformly across the Services. Each Service pays no more than $250.00 per semester-unit for tuition and fees combined. Each Service member participating in off-duty, voluntary education is authorized up to $4,500.00, in aggregate, for each fiscal year. As per NDAA FY08, each of the Services may also provide TA to activated Service members of the Selected Reserves and Individual Ready Reserve. For Fiscal Year 2009 (FY09), the Services executed approximately $800 million for Off-Duty and Voluntary Education Programs. For Fiscal Year 2010 (FY10), the President's Budget for Off-Duty and Voluntary Education is approximately $790 million, with $208 million programmed for operational costs and $582 million programmed for tuition assistance costs.

Section 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

It has been certified that 32 CFR part 68 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

It has been certified that 32 CFR part 68 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule updates policy and procedures for the voluntary education programs within DoD for Service members and their adult eligible family members. Guidance on voluntary education programs is available through the Education Centers located on military installations.

Public Law 96–511, "*Paperwork Reduction Act*"

It has been certified that 32 CFR part 68 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "*Federalism*"

It has been certified that 32 CFR part 68 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 68

Adult education, Armed forces, Colleges and universities, Education, Educational study programs, Government contracts, Military personnel, Student aid.

Accordingly, 32 CFR part 68 is proposed to be added to read as follows:

PART 68—VOLUNTARY EDUCATION PROGRAMS

Sec.

68.1 Purpose.
68.2 Applicability.
68.3 Definitions.
68.4 Policy.
68.5 Responsibilities.
68.6 Procedures.

Appendix A to Part 68—DoD Voluntary Education Partnership Memorandum of Understanding (MOU) Between DoD Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and [NAME OF EDUCATIONAL INSTITUTION]

Appendix B to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Air Force

Appendix C to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Army

Appendix D to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Marine Corps

Appendix E to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Navy

Authority: 10 U.S.C. 2005, 2007.

§ 68.1 Purpose.

This part:

(a) Implements policy, assigns responsibilities, and prescribes procedures for the operation of voluntary education programs in the Department of Defense.

(b) Establishes the Interservice Voluntary Education Board.

§ 68.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

§ 68.3 Definitions.

The following terms and their definitions are for the purpose of this part:

Academic. Having to do with general or liberal arts education, rather than technical or vocational.

Academic skills. Competencies in English, reading, writing, speaking, mathematics, and computer skills that are essential to successful job performance and new learning. Also referred to as functional or basic skills.

Active Guard and Reserve (AGR). National Guard or Reserve members of the Selected Reserve (SELRES) who are ordered to active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the Reserve Component units or duties as prescribed in 10 U.S.C. 12310. All AGR members must be assigned against an authorized mobilization position in the unit they support. (Includes Navy full-time support (FTS), Marine Corps Active Reserve (ARs), and Coast Guard Reserve Personnel Administrators (RPAs)).

American Council on Education. The major coordinating body for all the Nation's higher education institutions. Seeks to provide leadership and a unifying voice on key higher education issues and publishes the "Guide to the Evaluation of Educational Experiences in the Armed Services."

Annual TA Ceiling. The maximum dollar amount authorized for each Service member for TA per fiscal year. Each Service member participating in off-duty voluntary education programs shall be entitled to the full amount authorized each fiscal year in accordance with DoD policy.

Army American Council on Education Registry Transcript System. An official document, when sent directly from the Army American Council on Education Registry Transcript System center to the educational institution, which articulates a Soldier's military experience and training and the American Council on Education-recommended college credit for this training and experience.

Documented educational plan. An official academic document provided by the educational institution that articulates all courses and general education requirements required for degree completion. The documented education plan identifies all courses required for graduation in the individual's intended academic discipline and level of postsecondary study, and an evaluation of all successfully completed prior coursework, and evaluated credit for military training and experience, and other credit sources applied to the institutional degree requirements. For participating SOC Degree Network System institutions, a SOC Army Degrees, SOC Navy Degrees, SOC Marine Corps Degrees, or SOC Coast Guard Degrees Student Agreement serves as this documented education plan.

Education advisor. A professionally qualified, subject matter expert/program manager in the education field at the installation education center. The following position titles may also be used for an education advisor: Education Services Specialist, Education Services Officer (ESO), Voluntary Education Director, Navy College Office Director, and Education and Training Section (ETS) Chief.

Education center. A military installation facility, including office space, classrooms, laboratories, and other features, that is staffed with professionally qualified personnel and to conduct voluntary education programs. For Navy, this is termed the "Navy College Office."

Educational plan. A planning document provided by the educational institution that outlines general degree requirements for graduation. Typically an educational plan presents the general education and major-related course requirements, degree competencies (e.g., foreign language, computer literacy), and elective course options that students may choose for a specified program of study. This document is required from the institution upon the successful completion of 6 semester hours by the Service member at the institution.

Family member. A family member is defined as the eligible adult of an active duty, reserve, or National Guardsman with a valid DoD or Coast Guard identification card.

IRR or *Individual Ready Reserve.* The IRR is a manpower pool comprised principally of individuals who have had training, have previously served in the active component or in the SELRES, and have some period of their military service obligation or other contractual obligation remaining. Some individuals volunteer to remain in the IRR beyond their military service or contractual obligation and participate in programs providing a variety of professional assignments and opportunities for earning retirement points and military benefits.

MVER or *Military Voluntary Education Review.* A third-party evaluation of voluntary education programs covered by the DoD Voluntary Education Partnership MOU.

Ready Reserve. Comprised of military members of the Reserve and National Guard, organized in units or as individuals, or both, and liable for involuntary order to active duty in time of war or national emergency pursuant to 10 U.S.C. 12310 and 12301 and 14 U.S.C. 712 in the case of members of the Coast Guard Reserve. The Ready Reserve consists of the SELRES, the IRR, and the Inactive National Guard.

Sailor/Marine American Council on Education Registry Transcript System. An automated, official document, when sent directly from the Sailor/Marine American Council on Education Registry Transcript System Operations Center to the educational institution, that articulates a Sailor's or Marine's military experience and training and the American Council on Education recommended college credit for this training and experience.

SELRES or *Selected Reserve.* Consists of those units and individuals within the Ready Reserve designated by their respective Service as essential to wartime missions and must therefore maintain a higher priority over all other Reserves. The SELRES includes Reserve unit members (including members in the training pipeline), Individual Mobilization Augmentees, and Active Guard/Reserve members.

Semester-hour TA Cap. The maximum dollar amount authorized for TA per semester-hour credit. A Service shall pay no more than the established DoD cap.

SOC or *Servicemembers Opportunity Colleges.* A consortium of over 1,800 colleges and universities, created in 1972, which seeks to enhance the educational opportunities to Service members who may have difficulty in completing college programs due to frequent military moves.

TA or *tuition assistance.* Funds provided by the Military Services or U.S. Coast Guard to pay a percentage of the charges of an educational institution for the tuition of an active duty, Reserve or National Guard member of the Armed Forces, or Coast Guard member, enrolled in approved courses of study during off-duty time. Off-duty time is defined as time when the Service member is not scheduled to perform official duties.

Top-Up. An option, under chapter 30 of the Montgomery G.I. Bill and Post-9/11 G.I. Bill, that enables active duty Service members to receive from the Department of Veterans Affairs those tuition and fee costs that exceed the amount of TA provided to the Service member by his or her Service.

Troops-to-Teachers program (TTT). The Troops-to-Teachers program is a Department of Education program administered by the DoD to help recruit quality teachers for schools that serve low-income families throughout America. TTT helps relieve teacher shortages, especially in math, science, special education, and other high-needs subject areas, and assists military personnel in making successful transitions to second careers in teaching.

Voluntary education programs. Continuing, adult, or postsecondary education programs of study that Service members elect to participate during their off-duty time, and which are available to other members of the military community.

§ 68.4 Policy.

It is DoD policy that:

(a) Members of the Armed Forces serving on active duty or actively-drilling members of the Reserve Components shall be afforded the opportunity to complete their high school education, earn an equivalency diploma, improve their academic skills or level of literacy, enroll in vocational and technical schools, receive college credit for military training and experience in accordance with the American Council on Education's "Guide to the Evaluation of Educational Experiences in the Armed Services" (available at *http://www.militaryguides.acenet.edu/*)," take tests to earn college credit, and enroll in postsecondary education programs that lead to undergraduate and graduate degrees.

(b) Service members' costs to participate in the DoD Voluntary Education Program as authorized by law and subject of the availability of funds, shall be reduced through financial support, including tuition assistance that is administered uniformly across the Military Services.

(c) Information and counseling about voluntary education programs shall be readily available and easy to access so that Service members are encouraged to make maximum use of the educational opportunities available.

(d) Accredited institutions shall be encouraged to provide degree programs on military installations and the Military Services shall facilitate their operations on the installations.

(e) To the extent that space is otherwise available, eligible adult family members of Service members, DoD civilians and their eligible adult family members, and DoD retirees may enroll in classes offered on a full cost basis.

§ 68.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall:

(1) Monitor implementation of and ensure compliance with this part and DoD Directive 1322.08E (*see http://www.dtic.mil/whs/directives/corres/pdf/132208p.pdf*).

(2) Establish rates of tuition assistance (TA) to ensure uniformity across the Military Services as required by DoD Directive 1322.08E and this part.

(3) Establish the Interservice Voluntary Education Board, comprised of full-time or permanent part-time federal employees.

(4) Maintain a program to assess the effectiveness of the voluntary education programs on military installations.

(5) Issue written policy guidance annually for the funding and operation

of the Defense Activity for Non-Traditional Education Support (DANTES).

(b) The Deputy Under Secretary of Defense for Military Community and Family Policy (DUSD(MC&FP)), under the authority, direction, and control of the USD(P&R), shall:

(1) Ensure compliance with this part and DoD Directive 1322.08E and related issuances.

(2) Exercise oversight over the DoD Voluntary Education Program.

(3) Provide ongoing and routine clarifying guidance for the DoD Voluntary Education Program, to include DANTES.

(4) Provide representatives to professional education and cross-agency panels addressing issues impacting the DoD voluntary education programs, its regulatory scope, clientele, and partners.

(5) Designates the Voluntary Education Chief within the Office of the DUSD(MC&FP) as the chairperson of the Interservice Voluntary Education Board.

(c) The Interservice Voluntary Education Board, under the authority, direction, and control of the Voluntary Education Chief within the Office of the DUSD(MC&FP), is comprised of one representative from the ASD(RA), and one representative each from the Army, Navy, Air Force, and Marine Corps. The Director, DANTES, shall serve as an ex officio member. Meeting quarterly, the Board shall:

(1) Provide a forum for the exchange of information and discussion of issues related to voluntary education programs.

(2) Develop recommendations for changes in policies and procedures.

(3) Develop recommendations for DANTES' activities and operations that support voluntary education programs.

(4) Review DANTES activities which support DoD voluntary education programs, to include budget execution and recommend execution year adjustments.

(5) Develop recommended policy and program guidance for DANTES for the Five-Year Defense Plan.

(d) The Director, DANTES, under the authority, direction, and control of the Voluntary Education Chief of the Educational Opportunities Directorate within the Office of the DUSD(MC&FP), shall:

(1) Support the off-duty, voluntary education programs of DoD and conduct special projects and developmental activities in support of education-related DoD functions.

(2) Assist the Military Services in providing high-quality and valuable educational opportunities for Service members, their eligible adult family members, and DoD personnel, and assist personnel in achieving professional and personal educational objectives. This role includes the consolidated management of programs that prevent duplication of effort among the Services. Through its activities, DANTES supports recruitment, retention, and the transition efforts of DoD.

(3) Assume responsibilities and functions that include:

(i) Managing and facilitating the delivery of a wide variety of examinations including the General Equivalency Diploma test, college admissions, credit-by-examination programs, and an extensive number of certification examinations.

(ii) Upon request, issuing transcripts for the United States Armed Forces Institute and the examination and certification programs.

(iii) Managing the contract through which former DoD Dependents Schools students can obtain copies of archived transcripts.

(iv) Managing the contract and functions related to the evaluation of educational experiences in the Armed Forces that are covered by the contract.

(v) Providing or developing and distributing educational materials, reference books, counseling publications, educational software, and key educational resource information to DoD, the Military Services, and the installations.

(vi) Managing the SOC program contract and related functions.

(vii) Managing the DoD contract that provides for periodic third-party reviews of DoD voluntary education programs (Military Voluntary Education Review (MVER)).

(viii) Managing the Voluntary Education Programs for Military Personnel-Management Information System includes gathering, collating, troubleshooting, and verifying participation and cost data from the Services. Providing requisite consolidated reports to USD(P&R), per DoD Instruction 1322.9 (*see http://www.dtic.mil/whs/directives/corres/pdf/132209p.pdf*).

(ix) Establishing, maintaining, and updating systems and processes to administer, track, and process updates to, and generate reports from, the centrally-managed DoD Voluntary Education Partnership Memorandums of Understanding (MOUs) between DoD and institutions offering coursework to military personnel and their eligible adult family members, as specified in appendices A, B, C, D, and E to this part.

(x) Managing the DoD independent study catalog and its support systems.

(xi) Negotiating, administering, and coordinating contracts for DoD Worldwide Education Symposia in support of and in conjunction with the Interservice Voluntary Education Board.

(xii) Establishing, refining, updating, and maintaining a DoD voluntary education presence on the Internet. Maintain necessary infrastructure to ensure that information on the Internet is always current and available to leadership, agency personnel, the public, and others.

(xiii) Administering the TTT program in accordance with the TTT MOU negotiated by DoD with the Department of Education, "Transfer of Funds to Administer the Troops-to-Teachers Program." [1]

(xiv) Monitoring new technological developments, providing reports, cost analyses, and recommendations on educational innovations, and conducting special projects requested by the Department of Defense and the Services, approved by the Interservice Voluntary Education Board, and as reflected and approved in DANTES' annual policy guidance.

(xv) Conducting staff development training on DANTES' policies, procedures, and practices related to voluntary education testing programs, and providing additional training as requested by the Office of the Secretary of Defense and the Services.

(xvi) Serving as the Defense Media Activity's point of contact for information on DANTES programs for military personnel.

(xvii) Providing support, as requested, to DoD and Service Quality of Life and Transition support programs.

(xviii) Providing other support in mission areas as directed by policy guidance issued by the USD(P&R) and the DUSD(MC&FP).

(4) Maintaining liaison with education services officials of the Military Services, and appropriate Federal and State agencies and educational associations, in matters related to the DANTES mission and assigned functions.

(5) Serving on panels and working groups designated by the DUSD(MC&FP) or designee.

(6) Serving as the Executive Secretary at the Interservice Voluntary Education Board meeting convened annually to review DANTES' programs and to develop recommendations for inclusion in annual policy guidance for DANTES. In this role, the Director, DANTES, shall coordinate the meeting, prepare the

[1] For copies of this MOU or information on the Troops-to-Teachers Program, *e-mail: ttt@navy.mil* or call 1–800–231–6242.

agenda, review and analyze DANTES' programs and initiatives outlined in the prior year's operational plan, and provide minutes after the meeting.

(7) Maintaining the repository for the DoD Voluntary Education Partnership MOU between USD(P&R) and Partner Institutions, to include Service-specific addendums. DANTES will:

(i) Administer the system per guidance from USD(P&R).

(ii) Create and maintain a data base for all signed documents.

(iii) Publish a web-based list of all institutions that have signed partnership agreements.

(8) Providing data analyses and generate reports required by DoD and the Interservice Voluntary Education Board as needed.

(e) The Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), under the authority, direction, and control of the USD(P&R), shall:

(1) Ensure compliance with this part and DoD Directive 1322.08E and related issuances.

(2) Appoint a representative to serve on the Interservice Voluntary Education Board.

(3) Arrange the assignment of, on a rotating basis, a field grade officer, to serve as the Reserve Component Advisor to the Voluntary Education Chief within the Office of DUSD(MC&FP).

(f) The Secretaries of the Military Departments shall:

(1) Ensure compliance with this part and DoD Directive 1322.08E and related issuances.

(2) Establish, maintain, coordinate, and operate voluntary education programs that encompass a broad range of educational experiences including, but not limited to, academic skills development, high school completion programs, vocational and/or technical programs, and programs leading to the award of undergraduate and graduate degrees.

(3) Ensure sufficient funding is available to provide Service members with TA support consistent with the requirements in appendices A, B, C, D, and E to this part.

(4) Ensure educational counseling is available to Service members so they will have sufficient information and guidance to plan an appropriate program of study.

(5) Ensure voluntary education programs participate in the established DoD third party review process (MVER).

(i) The third-party review assesses the quality delivery, and coordination of the voluntary education programs provided to military personnel on the installation, in the community and via distance learning. It assists in improving the quality of the delivery of these programs through recommendations to institutions, installations, and the Military Services.

(ii) Waivers to the third party review must be submitted to and approved by the Voluntary Education Chief within the Office of the DUSD(MC&FP).

(6) Provide an Army, Navy, Air Force, and Marine Corps representative to serve on the Interservice Voluntary Education Board.

(7) Assign, on a rotating basis, a senior enlisted Service member in pay grade E–9 to serve as the DANTES enlisted advisor.

(8) Ensure military test control officers and test centers comply with the policies and procedures published in the DANTES Examination Program Handbook, available at *http://www.dantes.doded.mil/dantes_web/library/docs/deph/part1/part1.pdf*.

(9) Ensure personnel who provide counseling, advice, and program management related to voluntary education programs have access to the DoD Voluntary Education homepage and other Web sites so they can provide current and accurate information to Service members.

(10) Provide opportunities for Service members to access the Internet to enroll in and complete postsecondary courses that are part of their approved educational plan leading to an educational goal.

(g) The Secretary of the Navy, as the DoD Executive Agent (DoD EA) for DANTES per DoD Directive 1322.08E and DoD Directive 5101.1, in addition to the responsibilities in paragraph (f) of this section, shall:

(1) Transmit annual policy guidance issued by USD(P&R) to DANTES.

(2) Ensure the Director of DANTES serves as the Executive Secretary of the Interservice Voluntary Education Board and prepares the agenda and minutes of meetings.

(3) Ensure the Director of DANTES provides updates on DANTES plans, operations, and activities to the USD(P&R).

(4) Through its civilian personnel system, will advertise the position of Director of DANTES when the position is vacated. The Secretary of the Navy, as the DoD EA, will appoint the Director of DANTES in accordance with the procedures outlined in § 68.6.

§ 68.6 Procedures.

(a) *TA for Service members participating in education programs.* (1) TA shall be available for Service members participating in high school completion and accredited undergraduate or graduate education programs. Approved courses are those that are part of an identified course of study leading to a postsecondary certificate or degree and non-degree oriented language courses integral to the Defense Language Transformation Roadmap (available at *http://www.defense.gov/news/Mar2005/d20050330roadmap.pdf)*.

(i) Use of TA for non-degree oriented language courses is limited to those published by the Deputy Under Secretary of Defense (Plans) as strategic stronghold or immediate investment languages.

(ii) Dominant-in-the-force languages and languages deemed by DoD as already having sufficient strategic capacity authorized will not be funded under title 10 of the U.S. Code, except for OCONUS assignments.

(2) TA shall be applied:

(i) For 100 percent of the cost of approved high school completion programs for Service members who have not been awarded a high school or equivalency diploma and who are enrolled in such programs.

(ii) In support of the voluntary education and training of active duty Service members during their off-duty periods, each Military Service shall pay all or a portion, as specified in paragraphs (a)(2)(ii)(A) through (F) of this section, of the charges of an educational institution for education and training during the member's off-duty periods.

(A) When an institution's charges are $250.00 or less per semester-hour of credit or its equivalent, the responsible Service shall pay the entire amount charged by the institution. In computing credit equivalency, the following conversions shall apply: 1 quarter hour credit = ⅔ semester hour credit; and 15 contact hours shall be considered equivalent to one semester-hour credit when neither semester- nor quarter-hours are specified for the education or training for which the Service member is enrolled.

(B) When an institution's charges exceed $250.00 per semester-hour of credit, or its equivalent, the responsible Service, subject to appropriations, shall pay $250.00 per semester-hour of credit. The Services shall pay no more than $250.00 per semester-unit for tuition and fees combined.

(C) Each Service member participating in off-duty, voluntary education are eligible for up to $4,500.00, in aggregate, for each fiscal year.

(D) Covered charges include those submitted to the Service by the educational institution for tuition, instructional fees, laboratory fees,

computer fees, and other fees directly related to the specific course enrollment of that member in that educational institution. TA funds are not to be used for the purchase of books.

(E) To be eligible to receive TA, a military Service member must meet the minimum requirement of successfully completing basic training. In addition, all respective service requirements must be met to include training qualification, unit assignment, and/or time in service criteria.

(F) When approved in advance and consistent with paragraphs (a)(2)(ii)(A) through (D) of this section, Service members may be reimbursed for charges of an educational institution for certain non-traditional courses for which, as a matter of policy, payment is not authorized until proof of completion is provided.

(iii) The TA rate, credit cap, and annual per capita ceiling, shall be reviewed periodically in consideration of inflation and other effects, and shall be applicable uniformly whether instruction is delivered traditionally in-the-classroom or through distance education. Rates of TA other than as identified in paragraphs (a)(2)(ii)(A) through (F) of this section are not authorized.

(3) TA is available to a commissioned officer on active duty only if the officer agrees to remain on active duty, other than an officer serving in the Ready Reserves, for a period of at least 2 years after the completion of the education or training for which TA was paid (see 10 U.S.C. 2007).

(4) The Secretary concerned may make TA available to a member of the SELRES if (see 10 U.S.C. 2007):

(i) In the case of a commissioned officer, the officer must agree to remain a member of the SELRES for at least 4 years after completion of the education or training for which TA is paid.

(ii) In the case of an enlisted member, the Secretary concerned may require the member of the SELRES to enter into an agreement to remain a member of the SELRES for up to 4 years after completion of the education or training for which TA is paid.

(5) The Secretary concerned may make TA available to a member of the IRR who has a military occupational specialty designated by the Secretary concerned if (see 10 U.S.C. 2007):

(i) In the case of a commissioned officer, the officer must agree to remain a member of the SELRES or IRR for at least 4 years after completion of the education or training for which TA was paid.

(ii) In the case of an enlisted member, the Secretary concerned may require the member of the IRR to enter into an agreement to remain a member of the IRR for up to 4 years after completion of the education or training for which TA is paid.

(6) Members performing Active Guard and Reserve (AGR) duty under either 10 U.S.C. 12301 or active duty under 14 U.S.C. 712 are eligible for TA under paragraph (a)(4) of this section.

(7) Reimbursement for an unfulfilled TA obligation is required as stipulated in 10 U.S.C. 2005 or 37 U.S.C. 303a(e), as they appropriately apply to members of the Active and Reserve components.

(8) To retain TA, students must maintain a cumulative grade point average (GPA) of 2.0 or higher after completing 15 semester hours, or equivalent, in undergraduate studies, or a GPA of 3.0 or higher in graduate studies on a 4.0 grading scale.

(9) TA shall not be authorized for any course for which a Service member receives reimbursement in whole or in part from any other Federal source when the payment would constitute a duplication of benefits. Academic institutions have the responsibility to notify the Service if there is any duplication of benefits, determine the amount of credit that should be returned, and credit the amount back to the Service. The use of funds related to veterans' benefits to supplement TA received by active duty and Reserve component personnel is authorized to pay tuition costs not covered by TA.

(10) Pell Grants may be used in conjunction with TA assistance, including their use to pay that portion of tuition costs not covered by TA.

(11) TA shall be provided for courses provided by institutions awarding degrees based on demonstrated competency, if all of the conditions in paragraphs (a)(11)(i), (ii), and (iii) of this section are met:

(i) Competency rates are equated to semester or quarter units of credit, and

(ii) The institution publishes traditional grade correlations with "Pass/Fail" grades, and

(iii) The institution provides a part-time, less than a full-time unit load option for active duty personnel taking a bundled course load.

(iv) Enrollment in a professional practicum integral to these types of programs is also authorized. However, normal DoD TA caps and ceilings apply; the cost of expanded levels of enrollment over and above these enrollment levels and normal caps and ceilings must be borne by the student.

(12) When used for post-secondary training, TA shall be provided only for courses offered by postsecondary institutions accredited by an accrediting body recognized by the U.S. Department of Education.

(13) To receive TA, an institution must be a signatory of the DoD Voluntary Education Partnership Memorandum of Understanding (MOU) in appendices A, B, C, D, and E to this part, and the MOU must be posted on the DANTES Web site.

(b) *Guidelines for establishing, maintaining, and operating voluntary education programs.* (1) Education programs established under this part by each Military Service shall:

(i) Provide for the academic, technical, intellectual, personal, and professional development of Service members, thereby contributing to the readiness of the Armed Forces and the quality of life of Service members and their families.

(ii) Increase Service members' opportunities for advancement and leadership by reinforcing their academic skills and occupational competencies with new skills and knowledge.

(iii) Lead to a credential, such as a certificate, diploma, or college degree, signifying satisfactory completion of the educational program.

(iv) Include an academic skills program, as needed, which allows personnel to upgrade their reading, writing, computation, and communication abilities in support of academic skills and military occupations and careers. Academic skills programs may include English as a Second Language and basic science.

(v) Include programs and college offerings that support findings from periodic needs assessments. Duplication of course offerings on an installation should be avoided. However, the availability of similar courses through correspondence or electronic delivery shall not be considered duplication.

(vi) Be described in a publication or on-line source that includes on-installation educational programs, programs available at adjacent installations, and colleges and universities nearby the installation.

(2) Each Military Service, in cooperation with community educational service providers, shall provide support essential to operating effective education programs. This support includes:

(i) Adequate funds for program implementation, administration, and TA.

(ii) Adequately train staff to determine program needs, counsel students, provide testing services, and procure educational programs and services.

(iii) Adequate and appropriate classroom, laboratory, and office

facilities and equipment, including computers.

(iv) Access to telecommunications networks, computers, and libraries at times convenient to active duty personnel.

(3) In operating its programs, each Military Service shall:

(i) Provide to newly assigned personnel, as part of their orientation to each new installation or unit of assignment for Reserve component personnel, information about voluntary education programs available at that installation.

(ii) Maintain participants' educational records showing education accomplishments and educational goals.

(iii) Provide for the continuing professional development of their education services staff, including the participation of field staff in professional, as well as Service-sponsored, conferences, symposiums, and workshops.

(iv) Provide educational services, including TA counseling, academic advice and testing to their personnel and to personnel of other Services (including the Coast Guard when acting as a Military Service in the Department of the Navy) who are assigned for duty at installations of the host Service.

(v) Continually assess the state of its voluntary education programs and periodically conduct a formal needs assessment to ensure that the best possible programs are available to their members at each installation or in their state or area command for Reserve component personnel. It is essential that a formal needs assessment be conducted if there is a significant change in the demographic profile of the installation population.

(4) DoD civilian employees, members of the Reserve Components, retirees, and eligible adult family members of active duty personnel, DoD civilian employees, members of the Reserve Components, and retirees may participate in installation postsecondary education programs on a space-available basis and at no cost to the individual Service TA Program.

(5) At locations where an educational program that is offered on an installation is not otherwise conveniently available outside the installation, civilians who are not directly employed by the DoD or other Federal agencies, and who are not eligible family members of DoD personnel, may be allowed to participate in installation educational programs. While such participation contributes to positive community relations, participation must be on a student-funded, space-available basis, after the registration of military personnel, civilian employees, and eligible adult family members. Participation may also be subject to the terms of Status of Forces or other regulating agreements.

(6) Education centers and Navy College offices shall maintain liaison with appropriate State planning and approving agencies and coordinating councils to ensure that planning agencies for continuing, adult, or postsecondary education are aware of the educational needs of military personnel located within their jurisdiction.

(7) In operating a High School Program, each Military Service shall ensure the following:

(i) All Service members with less than a high school education shall have the opportunity to attain a high school diploma or its equivalent.

(ii) Neither a Military Service nor DANTES shall issue a certificate or similar document to Service members based on performance on high school equivalency tests. Military Services shall recognize attainment of high school completion or equivalency only after a State- or territory-approved agency has awarded the appropriate credential.

(iii) The Military Services shall pay 100 percent of the cost of high school equivalency instruction or proficiency testing and credentialing for Service members.

(iv) High school diploma programs must be delivered by institutions that are accredited by a regional accrediting body or recognized by a State's secondary school authority.

(c) *Procedures for obtaining voluntary education programs and services on military installations.* (1) Educational institutions interested in providing education and training opportunities on a military installation will provide their proposals to the installation education advisor, who will review and analyze these requests of the institutions on behalf of the installation commander.

(2) To obtain viable educational programs on a military installation, the installation education advisor shall communicate the installation's educational needs to a wide variety of potential providers.

(3) A military installation seeking to obtain educational programs shall provide the following information to interested providers:

(i) The level of instruction desired and specific degree programs being sought.

(ii) A demographic profile of the installation population and probable volume of participation in the program.

(iii) Facilities, equipment, and supporting services that the installation will provide without charge.

(iv) A copy of this part.

(v) Special requirements such as:

(A) Format (e.g., distance, evening, or weekend classes), independent study, short seminar, or other mode of delivery of instruction.

(B) Unique scheduling problems related to the operational mission of the installation.

(C) Any installation restrictions, limitations, or special considerations relevant to using an alternate delivery system (distance learning).

(4) In addition to the information in paragraph (c)(3) of this section, a military installation seeking to use alternate modes for the delivery of instruction shall inform potential providers about the following:

(i) Available computer hardware and supporting equipment.

(ii) Availability of space and level of security that can be expected.

(iii) Electrical, satellite, and network capabilities at the site.

(5) A Military Service considering an alternate delivery provider shall ascertain:

(i) If students will need special training or orientation for special courses or programs or for alternate delivery methods (distance learning, etc.) and, if so, how students will receive such orientation.

(ii) What electronic equipment and technical support are necessary at local sites.

(iii) If it will be necessary to have on-site facilitators.

(6) In evaluating proposals from potential providers, preference shall be given to those that meet the following criteria:

(i) Programs satisfy objectives defined by the most recent needs assessment.

(ii) Programs, courses, and completion requirements are the same as those at the provider's main administrative and academic campus.

(iii) The institution granting undergraduate academic credit must adhere to the Servicemembers Opportunity Colleges SOC Consortium Principles and Criteria (available at *http://www.soc.aascu.org/socconsortium/PublicationsSOC.html*) principles regarding the transferability of credit and the awarding of credit for military training and experience.

(iv) The provider is prepared to offer academic counseling and flexibility in accommodating special military schedules.

(7) In evaluating proposals from potential alternative delivery providers, preference shall be given to those that meet the following additional criteria:

(i) Documentation shows that courses offered using the alternative delivery mode have been used successfully for at least two years.

(ii) The program and delivery method address the needs of the population to be served.

(iii) Support systems exist to back up the delivery method.

(8) In establishing education programs on military installations, appropriate government officials shall seek favorable tuition rates, student services, and instructional support from providers.

(d) Minimum criteria for selecting institutions to deliver higher education programs and services on military installations. To be selected, institutions must:

(1) Be chartered or licensed by a State government or the Federal Government, and have State approval for the use of veterans' educational benefits for the courses to be offered.

(2) Be accredited by an agency recognized by the U.S. Department of Education.

(3) Conduct programs only from among those offered or authorized by the main administrative and academic office in accordance with standard procedures for authorization of degree programs by the institution.

(4) Ensure main administrative and academic office approval in faculty selection, assignment, and orientation; and participation in monitoring and evaluation of programs. Adjunct or part-time faculty shall possess comparable qualifications as full-time permanent faculty members.

(5) Conduct on-installation courses that carry identical credit values, represent the same content and experience, and use the same student evaluation procedures as courses offered through the main administrative and academic campus.

(6) Maintain the same admission and graduation standards that exist for the same programs at the main administrative and academic office, and include credits from courses taken off-campus in establishing academic residency to meet degree requirements.

(7) Provide library and other reference and research resources, in either print or electronic format, that are appropriate and necessary to support course offerings.

(8) Establish procedures to maintain regular communication between central institutional academic leadership and administrators and off-campus representatives and faculty. (Any institution's proposal must specify these procedures.)

(9) Provide students with regular and accessible counseling services either electronically or in-person.

(10) Charge tuition and fees that are not more than those charged to nonmilitary students.

(11) Have established policies for awarding credit for military training by examinations, experiential learning, and courses completed using modes of delivery other than instructor-delivered, on-site classroom instruction.

(e) *DANTES.* (1) Policy control and recommendations for DANTES shall be developed with the advice of the Interservice Voluntary Education Board.

(2) *Selection and rating of the Director, DANTES.* (i) The DUSD(MC&FP) will convene and chair the search committee responsible for replacing the Director, DANTES, when the position is vacated. At the request of the USD(P&R), the Service Secretaries will provide a senior manager to sit on the search committee. The committee will recommend the best qualified candidate to the DoD EA for possible appointment as the Director, DANTES.

(ii) The Director, State Liaison and Educational Opportunity, or its successor function, will be the rater of the Director, DANTES. The DUSD(MC&FP) will serve as the second-level rater.

(3) DANTES will:

(i) Develop, update, maintain and generate a registry of, and required reports pertaining to, MOUs of institutions approved to receive military TA for traditional and DL programs and courses.

(ii) Support the Service Voluntary Education programs by executing the program outlined in this part and the annual USD(P&R) policy guidance.

(iii) Provide execution information to the Interservice Voluntary Education Board quarterly and provide information required to assist with the Program Objective Memorandum development as requested by the Board.

Appendix A to Part 68—DoD Voluntary Education Partnership Memorandum of Understanding (MOU) Between DoD Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and [NAME OF EDUCATIONAL INSTITUTION]

1. Preamble

a. Providing access to quality postsecondary education opportunities is a strategic investment that enhances our Service member's ability to support mission accomplishment and successfully return to civilian life. A forward-leaning, lifelong learning environment is fundamental to the maintenance of a mentally powerful and adaptive leadership-ready force. Today's fast-paced and highly mobile environment, where frequent deployments and mobilizations are required to support our Nation's policies and objectives, requires DoD to sponsor postsecondary educational programs using a variety of learning modalities, which include instructor-led courses offered both on-installation and off-installation, as well as distance learning options. All are designed to support the professional and personal development and progress of our Service members and our DoD civilian workforce.

b. Making these postsecondary programs available to the military community as a whole further provides Service members, their eligible adult family members, DoD civilian employees, and retirees ways to advance their personal education and career aspirations, prepare them for future vocational pursuits, both inside and outside of DoD, and thus helps strengthen our Nation by producing a well-educated citizenry. This ensures the availability of a significant quality-of-life asset that enhances recruitment and retention efforts in an all-volunteer force.

2. Purpose

a. This MOU articulates the commitment and agreement educational institutions provide to DoD make by accepting funds via each Service's tuition assistance (TA) program in exchange for education services.

b. This MOU is not an obligation of funds nor a guarantee of program enrollments by DoD personnel, their eligible adult family members, DoD civilian employees, and retirees in an educational institution's academic programs, nor a guarantee for installation access.

c. This MOU covers courses delivered by educational institutions through all modalities. These include, but are not limited to, classroom instruction, distance education (i.e., web-based, CD–ROM, or multimedia) and correspondence courses.

d. This MOU includes the following education programs: High school programs, academic skills programs, and adult education programs for military personnel and their eligible adult family members.

e. This MOU articulates regulatory and governing directives and instructions:

(1) Eligible DoD recipients are governed by DoD Instruction 1322.25, DoD Directive 1322.08E, and each Military Service's policies, regulations, and fiscal constraints.

(2) Outside of the United States, education programs shall be operated in accordance with guidance from DoD Instruction 1322.25, DoD Instruction 1322.19, section 518 of Public Law 101–189 (10 United States Code Section 113 note), and under the terms of the Tri-Services contract currently in effect.

f. This MOU is subject at all times to the rules, guidelines, and regulations of DoD. Any conflicts between this MOU and such rules, guidelines, and regulations will be resolved in favor of the rules, guidelines, or regulations.

3. Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA

a. Have a signed MOU with DoD and adhere to requirements below prior to being

eligible to receive TA payments. The MOU includes Service-specific addenda (see Appendix B, C, D, and E of 32 CFR part 68).

(1) Those educational institutions that have a current MOU with DoD will sign this MOU at the expiration of their current MOU, or at the request of DoD or the specific Military Service holding a separate current MOU.

(2) Educational institutions must comply with this MOU and Service-specific addenda requirements that do not conflict with governing rules, guidelines, and regulations. Educational institutions failing to comply with requirements set forth in this MOU may receive a letter of warning, denial of establishment of new programs, termination of the MOU, removal from the installation, and/or withdrawal of approval of issuance of TA.

b. Must be accredited by an accrediting agency recognized by the U.S. Department of Education.

c. Agree to support the regulatory guidance provided by DoD and the Services.

d. Adhere to the Servicemembers Opportunity Colleges (SOC) Consortium Principles, Criteria, and Military Student Bill of Rights. (Principles and Criteria available at *http://www.soc.aascu.org/socconsortium/PublicationsSOC.html;* Bill of Rights available at *http://www.soc.aascu.org/socconsortium/PublicationsSOC.html*). SOC Principles are based on the principles set forth in the *Joint Statement on the Transfer and Award of Credit* (available at *http://www.acenet.edu/Content/NavigationMenu/ProgramsServices/CLLL/Joint.htm*), which were developed by members from the American Association of Collegiate Registrars and Admissions Officers (AACRAO), the American Council on Education (ACE), and the Council for Higher Education Accreditation (CHEA).

e. Recognize, accept, and award credit where appropriate, from the Army/American Council on Education Registry Transcript System, the Sailor/Marine American Council on Education Registry Transcript System, the Community College of the Air Force (CCAF), and the Coast Guard Institute transcript as the official sources of military training and experience documentation with corresponding college credit recommendations, when processing the individual's documented education plan.

f. Agree to participate in the Military Voluntary Education Review (MVER) process when requested. This requirement applies not only to institutions providing courses on military installations, but also to those institutions providing postsecondary instruction not located on the military installation and via distance learning.

4. TA Program Requirements for Educational Institutions

a. One Single TA Rate. Educational institutions will have one single TA rate for all Service members, regardless of Service component, within a specific Office of Postsecondary Education identification number (OPE ID). The OPE ID is assigned by the Department of Education to institutions approved to participate in federal student financial aid programs. This single TA rate includes active duty military members, members of the Reserve components, and the National Guard.

b. Course Enrollment Information. The educational institutions will provide course enrollment, course withdrawal, course cancellation, course completion or failure, grade, verification of degree completion, and billing information to the TA issuing Service's education office, as outlined in the Service's regulations and instructions.

c. Educational plan.

(1) Institutions will provide an evaluated educational plan to the Service member and his or her Service upon meeting one of the following conditions:

(a) Within 60 days after the individual has been accepted for admission; or

(b) After all required transcripts have been provided; or

(c) After individual has completed 6 semester hours with the institution.

(2) Institutions will submit a new evaluated educational plan when a Services' education advisor approves a change in the Service member's educational goal.

(3) When an educational plan is issued, institutions will not add, delete, or change course requirements after the student accepts the education plan and begins the course of study.

d. Approved and Valid Courses.

(1) Approved Courses. If an eligible Service member decides to use TA, educational institutions will enroll him or her only after the TA is approved by the individual's Service. Service members will be solely responsible for all tuition costs without this prior approval. This requirement does not prohibit an educational institution from pre-registering a Service member in a course in order to secure a slot in the course.

(2) Valid Courses.

(a) Part of an individual's evaluated educational plan; or

(b) Pre-requisites for courses within the individual's evaluated educational plan; or

(c) Required for acceptance into a higher-level degree program, unless otherwise specified by Service regulations.

e. Use of Financial Aid with TA.

(1) "Top-Up" eligible active duty DoD personnel may use this Montgomery or Post-9/11 G.I. Bill benefit in conjunction with TA funds from their Service to cover those course costs to the Service member that exceed the amount of TA paid by his or her Service.

(2) DoD personnel are entitled to consideration for all forms of financial aid that educational institutions make available to students at their home campus. Educational institution financial aid officers shall provide information and application processes for scholarships, fellowships, grants, loans, etc., to DoD TA recipients.

(3) DoD TA recipients, who also qualify for Pell Grants through the Department of Education's Free Application for Financial Student Assistance program, shall have their TA benefits applied to their educational institution's account prior to the dispersal of their Pell Grant funds.

f. Administration of Tuition and Fees.

(1) The Services will provide TA in accordance with DoD- and Service-appropriate regulations. Any additional costs will be paid by the Service member to the institution at the time of registration in accordance with the institution's policy.

(2) TA will be limited to tuition and reimbursable fees/costs specifically required as a condition of enrollment in a particular class.

(3) Tuition charged to a Service member will in no case exceed the rate charged to nonmilitary students, unless agreed upon in writing by both the institution and the Service.

(4) The tuition and fee structure for the degree programs the institution proposes to offer on the installation must be provided annually. Any changes in the tuition and fee structure will be provided to and justified to all the Services, as soon as possible, but not fewer than 90 days prior to implementation. If the MOU is with a single educational institution, at a single location, with only one Service, the justification will be provided to that Service, which will then provide that information to the other Services.

(5) Refunds of government-funded TA will be paid in accordance with the institution's published refund policy and will go to the Service, not to the Service member.

(6) The institution will refund to the Service the total amount of tuition and fees paid for a course that is cancelled by the institution.

(7) TA invoicing information is located in the Service-specific addenda attached to this MOU.

g. Course Cancellations. Institutions are responsible for notifying Service members of class cancellations for both classroom and distance learning courses.

h. Materials and Electronic Accessibility.

(1) Institutions will ensure that course materials are readily available, either electronically or in print medium, and provide information about where the student may obtain class materials at the time of enrollment/registration.

(2) Institution representatives will counsel students to refrain from purchasing course materials prior to confirmation of sufficient enrollments for conduct of the class. Students will be encouraged to verify course acceptance by CCAF (Air Force only) or other program(s), with the installation education advisor before enrolling and/or requesting TA.

(3) Institutions will provide students with electronic access to their main administrative and academic center's library materials and professional services, as well as periodicals and books.

i. Graduation Achievement Recognition.

(1) The educational institution shall issue, at no cost to the Government, documentation as proof of completion, such as a diploma or certificate, to each student who completes the respective program requirements and meets all financial obligations.

(2) In accordance with Service requirements, the institutions shall provide the Government a list of those TA recipients who have completed a certificate, diploma, or degree program. The list will include the degree level, major, and major program requirements completion date.

(3) The institution shall make no distinction on any credential to reflect that

the course(s) or program(s) were not conducted at its main administrative and academic center.

(4) The institution shall provide students the opportunity to participate in a graduation ceremony.

j. Reporting Requirements and Performance Metrics.

(1) The institution shall provide electronic reports on all DoD TA recipients for programs and courses offered to personnel at each installation as required by the Service. This includes, but is not limited to, TA transactions, final course grades to include incompletes and withdrawals, degrees awarded, certificates earned, documented educational plans, courses offered, class rosters, and military graduation.

(2) The Service may evaluate the institution's overall effectiveness in administering its academic program, courses, and customer satisfaction to DoD. A written report of the findings will be provided to the institution. The institution shall have 90 calendar days to review the report, investigate if required, and provide a written response to the findings.

(3) The Services may request reports from an institution at any time, but not later than 2 years after termination of the MOU with such institution. Responses to all requests for reports shall be provided within 14 calendar days.

5. Requirements and Responsibilities for the Delivery of On-Installation Voluntary Education Programs and Services

a. Educational Institutions.

(1) Will agree to have a separate Installation MOU if they have a Service agreement to provide on-installation courses/degree programs. The Installation MOU contains the installation-unique requirements, which will be coordinated, documented, and retained by the installation's education advisor, with concurrence from the appropriate Service voluntary education representative, and presented to the Installation Commander for final approval.

(2) Will comply with the installation-unique requirements in the Installation MOU that do not conflict with the DoD Voluntary Education Partnership MOU and governing regulations.

(3) Will agree to coordinate degree programs offered on the installation with the installation's education advisor, who will receive approval from the Installation Commander, prior to opening of classes for registration.

(4) Will admit candidates to the institution's on-installation programs at their discretion; however, priority for registration in installation classes will be given in the following order to:

(a) Active duty, Reserve, and National Guard Personnel;

(b) Eligible adult family members of active duty and Reserve component personnel;

(c) Federally funded DoD civilian employees;

(d) Military retirees, other DoD personnel and their eligible adult family members; and civilians (on a space-available basis and subject to the Installation Commander's authorization) when their enrollment is in the best interest of the installation's program.

(5) Will provide the installation's education advisor, as appropriate, a tentative annual schedule of course offerings to ensure that the educational needs of the military population on the installation are met and to ensure no course or scheduling conflicts with other on-installation programs.

(6) Will provide instructors for their installation courses who meet the criteria established by the institution to qualify for employment as a faculty member on the main administrative and academic center.

(7) Will inform the installation education advisor about class cancellations for classroom-based classes on military installations no later than seven calendar days prior to the beginning of the term.

b. Military Service on the Installation.

(1) The Services' designated installation representative (usually the installation education advisor), shall be responsible for determining the local voluntary education program needs for the serviced military population and for selecting the off-duty educational programs to be provided on the installation, in accordance with the Services' policies. The Service, in conjunction with the educational institution, shall provide support services essential to operating effective educational programs. All services provided will be commensurate with the availability of resources (personnel, funds, and equipment). This support includes:

(a) Classroom and office space, as available. The Service will determine the adequacy of provided space.

(b) Repairs as required to maintain office and classroom space in "good condition" as determined by the Service, and utility services for the offices and classrooms of the institution located on the installation, e.g., electricity, water, and heat.

(c) Standard office and classroom furnishings within available resources. No specialized equipment will be provided.

(d) Janitorial services in accordance with installation facility management policies and contracts.

c. The Service reserves the right to disapprove installation access to any employee of the institution employed to carry out any part of this MOU.

d. Operation of a privately owned vehicle by institution employees on the installation will be governed by the installation's policies.

e. The installation education advisor will check with his or her Service's responsible office for voluntary education prior to allowing an educational institution to enter into an MOU with the installation.

6. Review, Changes, Signatures, Effective Date, and Expiration Date

a. *Review.* The signatories (or their successors) will review this MOU periodically in coordination with the Services, but no less than every 5 years to consider items such as current accreditation status, updated program offerings, and program delivery services.

b. *Changes.* Changes to this MOU will be in writing and shall be subject to approval by both of the signatories below, or their successors.

c. *Signatures.* The authorized signatory for DoD will be designated by the USD(P&R). The authorized signatory for the institutions will be determined by the institution.

d. *Effective Date.* This MOU is effective on the last date of signature below.

e. *Expiration Date.* This MOU will expire 5 years from the effective date below, unless terminated or updated prior to that date in writing by DoD or the Institution. The notice period is 30 days following a written termination notification.

FOR the DEPARTMENT OF DEFENSE:

_____

DESIGNATED SIGNATOR

DATE: _____

FOR THE INSTITUTION:

_____

PRESIDENT or Designee

_____

DATE: _____

Appendix B to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Air Force

1. *Purpose.* This addendum is between (Name of Educational Institution), hereafter referred to as the "Institution," and the United States Air Force (USAF). The purpose of this agreement is to provide guidelines and procedures for the delivery of educational services to active duty personnel, reservists, eligible retired military personnel, and DoD employees, civilians, and the eligible adult family members not covered in the DoD Voluntary Education Partnership Memorandum of Understanding (MOU) between the DoD Office of the Under Secretary of Defense for Personnel and Readiness and the Institution. This addendum is not to be construed in any way as giving rise to a contractual obligation of the USAF to provide funds to the Institution that would be contrary to Federal law.

2. *Responsibilities.*

a. USAF Education and Training Section (ETS) Chief will:

(1) Maintain a continuing liaison with the designated Institution representative and be responsible for inspections and the acceptance of the Institution's services. The ETS Chief will assist the Institution representative to provide military and USAF culture orientation to the Institution personnel.

(2) Review requests from Institutions with no on-installation MOU, for permission of installation access and space within the Education and Training Section (ETS) to counsel current students, provide information briefings and materials, attend Education Fairs, and other informational services approved by the Installation Commander. Approval of such requests by the ETS Chief will be based on space/time availability as well as need of the installation population.

(3) Assist the Institution with registration and training in the Academic Institution Portal (AI Portal) to input basic Institution information, degree offerings, tuition rates, grades, invoices, and search tools pre-built into the AF on-line Voluntary Education system.

b. Institutions will:

(1) Appoint and designate an Institution representative to maintain a continuing liaison with the USAF ETS Chief.

(2) Provide a basic education plan to each Airman and the ETS as soon as he/she decides to register with the Institution and while awaiting final evaluation of transfer credits.

(3) Assume responsibility for the administration and proctoring of all course examinations not normally administered and proctored within the traditional, in-the-classroom setting.

(4) Counsel interested Airmen on Academic Institution (AI) policies, to include but not limited to course withdrawal dates and penalties, course cancellation procedures, course grade publication, fees (covered by military tuition assistance (TA) and not covered by military TA), billing practices, and policy regarding incompletion of a course.

(5) Register and use the AI Portal to input AI basic information, degree offerings, tuition rates, invoice submission, course grades submission, and to pull pre-established educational institution reports while conducting business with the USAF.

(6) Submit one consolidated invoice per term via the AI Portal for each class in which active duty military Airmen are enrolled using the Mil TA. Submission will be made during the term, no later than the final add/drop/census date, and no later than 30 calendar days after the end of the term.

(7) Submit course grades via the AI Portal for each class in which active duty military Airmen are enrolled using Mil TA. Submission will be made no later than 30 calendar days after the end of the term.

(8) Accept the Government Purchase Card (GPC) for payment of Mil TA when the AI accepts credit cards for any part of AI business.

(9) Provide a list of program graduates via the AI Portal consisting of student name, program title, program type (such as bachelor's degree), and date of graduation no later than 30 calendar days after the end of the term in which graduation requirements are completed.

(10) All Institutions with no on-installation MOU will request permission for installation access and space within the ETS to counsel current students, provide information briefings and materials, attend Education Fairs, and other informational services approved by the Installation Commander. Approval of such requests by the ETS Chief will be based on space/time availability as well as need of the installation population in accordance with installation policy.

(11) All Institutions with an on-installation MOU or invitation for an on-installation activity, such as an educational fair, are authorized to counsel or provide information on any of their programs.

3. *Additional Guidelines.*

a. In addition to DoD policy outlined in the DoD MOU, the authorization of military tuition assistance (Mil TA) is further governed by Air Force Instruction (AFI) 36–2306, as well as applicable policy and guidance.

b. Installation access of non-DoD and non-installation personnel is at the discretion of the Installation Commander. Access once provided can be revoked at any time due to military necessity or due to conduct that violates installation rules or policies.

c. Release and waive all claims against the United States, its agents, officers, and employees arising out of the use of Air Force facilities, equipment, supplies, and services, by the Institution, its officers, agents, employees, and non-DoD affiliated students. The Institution further agrees to defend, pay, or settle all claims arising out of the use of Air Force facilities based upon the negligence, gross negligence, or willful misconduct of its agents, officers, employees, and non-DoD affiliated students. The Institution will hold the United States harmless from any claims arising out of the acts or omissions of the Institution its agents, representatives, officers, employees, and non-DoD affiliated students.

d. Cancellation provision. This addendum may be cancelled by either the USAF or Institution 30 days following the receipt of written notification from the cancelling party.

Appendix C to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Army

1. *Purpose.* This addendum is between (Name of Educational Institution), hereafter referred to as the "Institution," and the United States Army. The purpose of this agreement is to provide guidelines and procedures for the delivery of educational services to active duty personnel, reservists, eligible retired military personnel, and DoD employees, civilians, and the adult family members not covered in the DoD Voluntary Education Partnership Memorandum of Understanding between the DoD Office of the Under Secretary of Defense for Personnel and Readiness and the Institution. This addendum is not to be construed in any way as giving rise to a contractual obligation of the United States Army to provide funds to the Institution that would be contrary to Federal law.

2. *Responsibilities.*

a. *Army Education Services Officer (ESO) will:* In support of this addendum, maintain a continuing liaison with a designated Institution representative and be responsible for inspections and the acceptance of the Institution's services. The ESO will provide assistance to the Institution representative to provide military and Army culture orientation to the Institution personnel.

b. Institution will:

(1) Appoint and designate an Institution representative to maintain a continuing liaison with the Army ESO.

(2) Adopt the GoArmyEd processes. GoArmyEd is the Army Continuing Education System's (ACES) centralized and streamlined management system for the Army's postsecondary voluntary education programs. Existing Memorandums of Understanding/Agreements, Tri-Services contracts, or other contracts that Institutions may have with military installations and ACES remain in place and should be supplemented with DoD Instruction 1322.25.

(3) Agree to all of the terms in the ACES Policies and Procedures, available at *https://www.hrc.army.mil/site/education/GoArmyEd_School_Instructions.html,* such as: invoicing, grades, reports, library references, etc.

c. Cancellation provision. This addendum may be cancelled by either the Army or Institution 30 days following the receipt of written notification from the cancelling party.

Appendix D to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Marine Corps

1. *Purpose.* This addendum is between (Name of Educational Institution), hereafter referred to as the "Institution," and the U.S. Marine Corps. The purpose of this agreement is to provide guidelines and procedures for the delivery of educational services to active duty personnel, reservists, eligible retired military personnel, and Department of Defense (DoD) employees, civilians, and the adult eligible family members not covered in the DoD Voluntary Education Partnership Memorandum of Understanding between the DoD Office of the Under Secretary of Defense for Personnel and Readiness and the Institution. This addendum is not to be construed in any way as giving rise to a contractual obligation of the United States Marine Corps to provide funds to the Institution that would be contrary to Federal law.

2. *Responsibilities.*

a. *Marine Corps Education Services Officer (ESO) will:* In support of this addendum, maintain a continuing liaison with a designated Institution representative and be responsible for inspections and the acceptance of the Institution's services. The ESO will provide assistance to the Institution representative to provide military and Marine Corps culture orientation to the Institution personnel.

b. Institution will:

(1) Appoint and designate an Institution representative to maintain a continuing liaison with the Marine ESO.

(2) Be responsible, through its faculty and administration, for making sure that adequate print and non-print media resources to support all courses being offered are available at base/installation library facilities, on-site institution resource area, and/or via electronic transmission. Special resources for individual courses, including copies of relevant periodicals, should be placed in the base/installation library or made available by the Institution.

(3) Provide open enrollment in courses conducted through media (e.g., portable media devices or computer-aided). Those courses shall be on an individual enrollment basis.

(4) Provide all required equipment when the Institution provides instruction via media.

(5) Provide library services to the Marine Corps base/installation for students in the form of research and reference materials (e.g., books, pamphlets, magazines) of similar quality to the support provided students on the institution's home campus. Services shall

also include research and reference material in sufficient quantity to meet curriculum and program demands. Materials shall be, at a minimum, the required readings of the instructor(s) for a particular course or program, or the ability for the student to request a copy of such material, from the institution's main library, without any inconvenience or charge to the student (e.g., a library computer terminal which may allow the student to order material and have it mailed to their residence).

(6) Route locally generated publicity through the base ESO.

(7) Permit employment of off-duty military personnel or Government civilian employees by the institution, provided such employment does not conflict with the policies set forth in DoD Regulation 5500.7–R, "Joint Ethics Regulation." However, Government personnel employed in any way in the administration of this addendum will be excluded from such employment because of conflict of interest.

3. *Billing Procedures, Formal Grades, and Cancellation Provision.*

a. Invoices from institutions must be forwarded to: NETPDTC (Code N8115) Pensacola, FL 32509–5241 within 30 days of course completion.

b. All invoices must have the student name (if more than one name, alphabetically by last name), social security number, course number and description, government cost for each course, and total amount of invoice.

c. All invoices must have an invoice number and date.

d. If the institution has any problems with the billing of an invoice, the institution must notify NETPDTC (Code N8115) Pensacola, FL 32509–5241.

e. Grade reports will be provided to NETPDTC (Code N8115) within 30 days of term ending date or completion of the course, whichever is earlier.

f. Cancellation provision. This addendum may be cancelled by either the Marine Corps or Institution 30 days following the receipt of written notification from the cancelling party.

Appendix E to Part 68—Addendum for Education Services Between [NAME OF EDUCATIONAL INSTITUTION] and the U.S. Navy

1. *Purpose.* This addendum is between (Name of Educational Institution), hereafter referred to as the "Institution," and the United States Navy. The purpose of this agreement is to provide guidelines and procedures for the delivery of educational services to active duty personnel, reservists, eligible retired military personnel, and the Department of Defense (DoD) employees, civilians, and the adult family members not covered in the DoD Voluntary Education Partnership Memorandum Understanding (MOU) between the DoD Office of the Under Secretary of Defense for Personnel and Readiness and the Institution. This addendum is not to be construed in any way as giving rise to a contractual obligation of the Department of the Navy to provide funds to the academic institution that would be contrary to Federal law. This agreement may be amended by the Navy because of changes in statute, executive order, Navy directive, or other federal, state, or local government requirement. Other proposed amendments shall be communicated in writing to the other party, and that party shall have 90 days to provide a written response, and such amendments will only be made upon mutual consent of the parties. This addendum does not extend to any third party contracts between the educational institution and other non-educational institutions.

2. *Responsibilities.*

a. *Commanding Officer responsible for execution of the Voluntary Education program shall:*

(1) Be responsible for determining the local voluntary education program needs for the Navy population to be served and for recommending to the installation commander the educational programs to be offered on the base;

(2) Administer this agreement and provide program management support;

(3) Change Education Services Officer (ESO) to Navy College Office Staff;

(4) Manage the Navy College program Distance Learning Partnership (NCPDLP) agreements.

b. *Navy ESO will:* In support of this addendum, maintain a continuing liaison with the designated Institution representative and be responsible for inspections and the acceptance of the Institution's services. The ESO will provide assistance to the Institution representative to provide military and Navy culture orientation to the Institution personnel.

c. Institution will:

(1) For distance learning partner institution, comply with NCPDLP agreements.

(2) Appoint and designate an Institution Representative to maintain a continuing liaison with the Navy College Office Staff.

(3) Comply with Wide Area Work Flow processes for invoicing of tuition assistance.

(4) Provide a link to the academic institution through the Navy College Program Web Site, only if designated as NCPDLP school.

(5) Display the academic institution's advertising materials (i.e., pamphlets, posters, and brochures) at all Navy College Offices, only if designated as NCPDLP school.

(6) Upon request of the Navy College Office, provide and arrange access to the library and other academic reference and research resources in print or on-line format that are appropriate or necessary to support the courses offered. In addition, these library resource arrangements will be in accordance with the standards of the institution's accrediting association and the State Regulatory Agency having jurisdiction over the academic institution.

(7) Respond to e-mail message from students within one workday. Ensure toll-free telephonic access to academic counseling. Such telephonic access shall be available both in the continental United States and overseas.

(8) Comply with host command procedures before starting instructor-based courses on any Navy installation. The Navy College Office shall negotiate a separate agreement with the academic institution in concert with the host command procedures.

(9) Mail an official transcript indicating degree completion, at no cost to the Sailor or the government to the following address: Navy College Center, VOLED DET N211, Center for Personal and Professional Development, 6490 Saufley Field Road, Pensacola, FL 32509–5204.

d. *Other responsibilities.* Except as otherwise provided in the agreement, any dispute concerning an interpretation of, or a question of fact arising under this agreement which is not disposed of by mutual consent shall be decided by the Commanding Officer CPPD. This decision shall be in writing and constitute the final administrative determination.

e. Cancellation provision. This addendum may be cancelled by either the Navy or Institution 30 days following the receipt of written notification from the cancelling party.

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19314 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 161

[Docket ID: DOD–2009–OS–0184]

RIN 0790–AI61

Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes to establish policy, assign responsibilities, and provide procedures for the issuing of distinct DoD ID cards. The ID cards shall be issued to uniformed service members, their dependents, and other eligible individuals and will be used as proof of identity and DoD affiliation.

DATES: Comments must be received by October 5, 2010.

ADDRESSES: You may submit comments, identified by docket number and/or RIN 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 or Regulatory Information Number (RIN) 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: Chris Fagan at 703–696–0848.

SUPPLEMENTARY INFORMATION:

Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

It has been certified that 32 CFR part 161 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

Sec. 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

It has been certified that 32 CFR part 161 does not contain a Federal mandate that may result in expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

It has been certified that 32 CFR part 161 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 161 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "*Federalism*"

It has been certified that 32 CFR part 161 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 161

Administrative practice and procedure, Armed forces, Military personnel, National defense, Privacy, Security measures.

Accordingly, 32 CFR part 161 is proposed to be added to subchapter F to read as follows:

SUBCHAPTER F—SECURITY

PART 161—IDENTIFICATION (ID) CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS

Sec.

161.1 Purpose.
161.2 Applicability.
161.3 Policy.
161.4 Responsibilities.
161.5 Procedures.

Authority: 18 U.S.C. 499, 506, 509, 701, 1001.

PART 161—IDENTIFICATION (ID) CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS

§ 161.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures for the issuing of distinct DoD ID cards. The ID cards shall be issued to uniformed service members, their dependents, and other eligible individuals and will be used as proof of identity and DoD affiliation.

§ 161.2 Applicability.

This part applies to:

(a) OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) The Commissioned Corps of the U.S. Public Health Service, under agreement with the Department of Health and Human Services, and the National Oceanic and Atmospheric Administration, under agreement with the Department of Commerce.

§ 161.3 Policy.

It is DoD policy that a distinct DoD ID card shall be issued to uniformed service members, their dependents, and other eligible individuals and will be used as proof of identity and DoD affiliation.

§ 161.4 Responsibilities.

(a) The USD(P&R) shall:

(1) Establish minimum acceptable criteria for establishment and confirmation of personal identity, policy for the issuance of the DoD enterprise personnel identity credentials, and approval of additional systems under the Personnel Identity Protection (PIP) Program in accordance with DoDD 1000.25, "DoD Personnel Identity Protection (PIP) Program" (*see http://www.dtic.mil/whs/directives/corres/pdf/100025p.pdf*).

(2) Act as the Principal Staff Assistant (PSA) for the Defense Enrollment Eligibility Reporting System (DEERS), the Real-Time Automated Personnel Identification System (RAPIDS), and the Personnel Identity Protection (PIP) Program in accordance with DoDD 1000.25.

(3) Maintain the DEERS data system in support of the Department of Defense and applicable legislation and directives.

(4) Develop and field the required RAPIDS infrastructure and all elements of field support to issue ID cards including but not limited to software distribution, hardware procurement and installation, on-site and depot-level hardware maintenance, on-site and Web-based user training and central telephone center support, and telecommunications engineering and network control center assistance.

(5) In coordination with the Under Secretary of Defense for Intelligence (USD(I)), Assistant Secretary of Defense for Networks and Information Integration/DoD Chief Information Officer (ASD(NII)/DoD CIO), and the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), establish policy and oversight for common access card (CAC) life-cycle compliance with Federal Information Processing Standards (FIPS) Publication 201–1, "Personal Identity Verification (PIV) of Federal Employees and Contractors" (*http://csrc.nist.gov/*

publications/fips/fips201-1/FIPS-201-1-chng1.pdf).

(b) The Assistant Secretary of Defense for Health Affairs (ASD(HA)), under the authority, direction, and control of the USD(P&R), shall develop overall policy and establish procedures for providing medical care through the Military Health System to authorized beneficiaries and eliminate fraud, waste, and abuse in the provision of medical benefits.

(c) The Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), under the authority, direction, and control of the USD(P&R), shall develop policies and establish guidance for the National Guard and Reserve Component communities that impact benefits, entitlements, identity, and ID cards.

(d) The Deputy Under Secretary of Defense for Military Community and Family Policy (DUSD(MC&FP)), under the authority, direction, and control of the USD(P&R), shall develop policy and procedures to determine eligibility for access to DoD programs for morale, welfare, and recreation; commissaries; exchanges; lodging; children and youth; DoD schools; family support; voluntary and post-secondary education; and other military community and family benefits that impact identity and ID cards.

(e) The Director, Defense Human Resources Activity, under the authority, direction, and control of the USD(P&R), shall, in accordance with DoDD 1000.25:

(1) Develop policies and procedures for the oversight, funding, personnel staffing, direction, and functional management of the PIP Program.

(2) Coordinate with the Principal Deputy Under Secretary of Defense for Personnel and Readiness, the ASD(HA), and the ASD(RA) on changes to enrollment and eligibility policy and procedures pertaining to personnel, medical, and dental issues that impact the PIP Program.

(3) Develop policies and procedures to support the functional requirements of the PIP Program, DEERS, and the DEERS client applications.

(4) Secure funding in support of new requirements to support the PIP Program or the enrollment and eligibility functions of DEERS and RAPIDS.

(5) Approve the addition or elimination of population categories eligible for ID cards in accordance with applicable law.

(6) Establish the type and form of ID card issued to eligible population categories and administer pilot programs to determine the suitable form of ID card for newly identified populations.

(f) The USD(AT&L) shall:

(1) Issue regulatory coverage for CAC and Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and Contractors" (see *http://www.cac.mil/assets/pdfs/HSPD_12.pdf*) for contracts.

(2) Communicate Homeland Security Presidential Directive 12 requirements to the DoD acquisition community.

(3) Ensure that the requirement for contractors to return CACs at the completion or termination of each individual's support on a specific contract is included in all applicable contracts.

(g) The USD(I) shall:

(1) Establish policy for the use of ID cards for physical access purposes in accordance with DoD 5200.08–R.

(2) Establish policy for military, civilian, and contractor employee background investigation, submission, and adjudication across the Department of Defense, in compliance with Homeland Security Presidential Directive 12 and in accordance with DoD 5200.2–R.

(h) The ASD(NII)/DoD CIO shall:

(1) In coordination with the USD(I), USD(P&R), and USD(AT&L), establish policy and oversight for CAC life-cycle compliance with FIPS Publication 201–1.

(2) Provide guidance to DoD information systems administrators regarding use of non-DoD identification credentials, including the Federal PIV cards, for authenticating to DoD network accounts and DoD private Web sites.

(3) Ensure that the DoD public key infrastructure conforms to all applicable FIPS to the greatest extent possible.

(i) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the Under Secretary for Policy (USD(P)), shall facilitate force protection activities with the law enforcement community.

(j) The Heads of the DoD Components, the Director, USPHS, and the Director, NOAA shall:

(1) Develop and implement Component-level procedures for DoD directed policies or legislative requirements to support benefits eligibility through DEERS.

(2) Develop and implement Component-level ID card life-cycle procedures to comply with the provisions of this part.

(3) Ensure all DoD employees, Military Service members, and all other eligible CAC applicants, to include contract support and other affiliate CAC applicants, have met the background investigation requirements in paragraph (b)(3) of this section prior to approving CAC sponsorship and registration. Background investigation status must be verified and documented by the sponsor or sponsoring organization in conjunction with application for CAC issuance.

(4) Establish processes and procedures as part of the normal check-in and check-out process for collection of the CAC for all categories of DoD personnel when there is a separation, retirement, termination, contract termination or expiration, or CAC revocation. Since CACs contain personally identifiable information (PII), they shall be treated and controlled in accordance with DoD 5400.11–R, "Department of Defense Privacy Program" (*see http://www.dtic.mil/whs/directives/corres/pdf/540011r.pdf*) and DoD 5200.1–R, "Information Security Program" (*see http://www.dtic.mil/whs/directives/corres/pdf/520001r.pdf*). These cards shall be returned to any RAPIDS issuance location for proper disposal in a timely manner once surrendered by the CAC holder.

(5) Provide appropriate space and staffing for ID card issuing operations, as well as reliable telecommunications to and from the Defense Information Systems Agency managed Non-Secure Internet Protocol Router Network.

(6) Provide funding for CAC cardstock, printer consumables, and electromagnetically opaque sleeves to Defense Manpower Data Center (DMDC).

(7) Protect cardstock and consumables in accordance with the guidelines and standards maintained by DMDC.

(8) In accordance with FIPS Publication 201–1, provide electromagnetic opaque sleeves or other comparable technologies to protect against any unauthorized contactless access to the cardholder unique identification number stored on the CAC.

(9) Manage the distribution and locations of DoD Component-specific CAC personal identification number (PIN) reset workstations.

(10) To the maximum extent possible, and in accordance with DoD Components' designated approving authority guidelines, ensure networked workstations are properly configured and available for CAC holders to use the User Maintenance Portal-Post Issuance Portal service.

(11) Oversee supervision of Contractor Verification System trusted agents (TAs) and trusted agent security managers and ensure the number of contractors overseen by any TA is manageable.

§ 161.5 Procedures.

(a) *ID cards.* (1) DoD ID cards shall serve as the Geneva Convention Card for eligible personnel in accordance with DoDI 1000.1, "Identity Cards Required by the Geneva Conventions" (*http://www.dtic.mil/whs/directives/corres/pdf/100001p.pdf*).

(2) DoD ID cards shall be issued through a secure and authoritative process to ensure that access to DoD physical and logical assets is granted based on authenticated and secure identity information in accordance with DoDD 1000.25.

(3) The CAC, a form of DoD ID card, shall serve as the Federal PIV card for DoD implementation of Homeland Security Presidential Directive 12.

(4) ID cards, in a form distinct from the CAC, shall be issued and will serve as proof of identity and DoD affiliation for eligible communities that do not require the Federal PIV card that complies with FIPS Publication 201–1 and Homeland Security Presidential Directive 12.

(b) *ID card life cycle.* The ID card life cycle shall be supported by an infrastructure that is predicated on a systems-based model for credentialing as described in FIPS Publication 201–1. Paragraphs (b)(1) through (7) of this section represent the baseline requirements for the ID card life cycle. The specific procedures and sequence of order for these items will vary based on the applicant's employment status or affiliation with the Department of Defense and the type of ID card issued. Detailed procedures of the ID card life cycle for each category of applicant and type of ID card shall be provided by the responsible agency.

(1) *Sponsorship and eligibility.* Sponsorship shall incorporate the processes for confirming eligibility for an ID card. The sponsor is the person affiliated with the Department of Defense or other Federal agency who takes responsibility for verifying and authorizing the applicant's need for an ID card. Applicants for a CAC must be sponsored by a government official or employee.

(2) *Registration and enrollment.* Sponsorship and enrollment information on the ID card applicant shall be registered in DEERS prior to card issuance.

(3) *Background investigation.* A background investigation is required for those individuals eligible for a CAC. A background investigation is not currently required for those eligible for other forms of DoD ID cards. Sponsored CAC applicants shall not be issued a CAC without the required background investigation stipulated in Federal Information Processing Standards Publication 201–1. Applicants that have been denied a CAC based on an unfavorable adjudication of the background investigation may submit an appeal in accordance with DoD 5200.2–R.

(4) *Identity and eligibility verification.* Identity and eligibility verification shall be completed at a RAPIDS workstation. Verifying Officials (VOs) shall inspect identity and eligibility documentation and RAPIDS shall authenticate individuals to ensure that ID cards are provided only to those sponsored and with a current affiliation with the Department of Defense. RAPIDS shall also capture uniquely identifying characteristics that bind an individual to the information maintained on that individual in DEERS and to the ID card issued by RAPIDS. These characteristics may include, but are not limited to, digital photographs and fingerprints.

(5) *Issuance.* ID cards shall be issued at the RAPIDS workstation after all sponsorship, enrollment and registration, background investigation (CAC only), and identity and eligibility verification requirements have been satisfied.

(6) *Use and maintenance.* ID cards shall be used as proof of identity and DoD affiliation to facilitate access to DoD facilities and systems. Additionally, ID cards shall represent authorization for entitled benefits and privileges in accordance with DoD policies.

(7) *Retrieval and revocation.* ID cards shall be retrieved by the sponsor or sponsoring organization when the ID card has expired, when it is damaged or compromised, or when the card holder is no longer affiliated with the Department of Defense or no longer meets the eligibility requirements for the card. The active status of an ID card shall be revoked within the DEERS and RAPIDS infrastructure and, for CAC, the PKI certificates on the CAC shall be revoked.

(c) *Guidelines and restrictions.* The guidelines and restrictions in this paragraph (c) apply to all forms of DoD ID cards.

(1) Any person willfully altering, damaging, lending, counterfeiting, or using these cards in any unauthorized manner is subject to fine or imprisonment or both, as prescribed in 18 U.S.C. 499, 506, 509, 701, and 1001. Section 701 prohibits photographing or otherwise reproducing or possessing DoD ID cards in an unauthorized manner, under penalty of fine or imprisonment or both. Unauthorized or fraudulent use of ID cards would exist if bearers used the card to obtain benefits and privileges to which they are not entitled. Photocopying of DoD ID cards to facilitate medical care processing, check cashing, voting, tax matters, the Servicemember's Civil Relief Act, or administering other military-related benefits to eligible beneficiaries are examples of authorized photocopying. When possible, the ID card will be electronically authenticated in lieu of photographing the card.

(2) Treaties, status-of-forces agreements (SOFAs), or military base agreements in overseas areas may place limitations on the logistical support that otherwise might be available to eligible personnel. SOFAs with foreign countries may limit the use of commissary or exchange facilities to persons who are stationed or performing temporary duty with the host nation under official orders in support of the mutual defense mission. ID cards shall not be issued for the sole purpose of implementing restrictions under SOFAs. ID cards shall be issued in accordance with this part and the uniformed services shall use other means, such as ration cards, to implement restrictions under SOFAs as required.

(3) All ID cards are property of the U.S. Government and shall be returned upon separation, resignation, firing, termination of contract or affiliation with the Department of Defense, or upon any other event in which the individual no longer requires the use of such ID card.

(4) ID cards that are expired, invalidated, stolen, lost, or otherwise suspected of potential or actual unauthorized use shall have the status of the cards revoked in DEERS and, for CACs, have the PKI certificates immediately revoked to prevent any unauthorized use.

(5) There are instances where graphical representations of ID cards are necessary to facilitate the DoD mission. When used and/or distributed, the replicas must not be the same size as the ID card, must have the word "SAMPLE" written on them, and shall not contain an individual's PII. All sample ID cards must be maintained in a controlled environment and shall not serve as a valid ID.

(6) Individuals within the Department of Defense who have multiple personnel category codes (*e.g.,* an individual who is both a reservist and a contractor) shall be issued a separate ID card in each personnel category for which they are eligible. Multiple current ID cards of the same form (*e.g.,* CAC) shall not be issued or exist for an individual under a single personnel category code.

(7) ID cards shall not be amended, modified, or overprinted by any means.

No stickers or other adhesive materials are to be placed on either side of an ID card. Holes shall not be punched into ID cards, except when a CAC has been requested by the next of kin for an individual who has perished in the line of duty. A CAC provided to next of kin shall have the status of the card revoked in DEERS, have the certificates revoked, and have a hole punched through the integrated circuit chip prior to release of the CAC to the next of kin.

(8) An ID card shall be in the personal custody of the individual to whom it was issued at all times. If required by military authority, it shall be surrendered for ID or investigation.

(d) *CAC migration to Federal PIV requirements.* The Department of Defense is currently migrating the CAC to meet the Federal requirements for credentialing contained within FIPS Publication 201–1 and Homeland Security Presidential Directive 12. Migration will take place over multiple years as the card issuance hardware, software, and supporting systems and processes are upgraded. Successful migration will require coordination and collaboration within and among all CAC communities (*e.g.,* personnel security, operational security, industrial security, information security, physical security, and information technology). The following organizations will support the migration in conjunction with the responsibilities listed in § 161.3:

(1) The DMDC shall:

(i) Procure and distribute CAC consumables, including card stock, electromagnetically opaque sleeves, and printer supplies, commensurate with funding received from the DoD Components.

(ii) In coordination with the Office of the Under Secretary of Defense for Policy (OUSD(P)), establish an electronic process for securing CAC eligibility information on foreign government military, employee, or contract support personnel whose visit status and background investigation has been confirmed, documented, and processed by OUSD(P) according to DoDD 5230.20 (*see http://www.dtic.mil/whs/directives/corres/pdf/523020p.pdf*).

(iii) In accordance with DoD Directive 5400.11, electronically capture and store source documents in the identity proofing process at the accession points for eligible ID card holders

(iv) Implement modifications to the CAC applets and interfaces, add contactless capability to the CAC platform, and, in accordance with DoD 5400.11–R, implement modifications to the CAC topology to support compliance with FIPS Publication 201–1.

(v) Establish and implement procedures for capturing biometrics required to support CAC issuance, which includes fingerprints and facial images specified in FIPS Publication 201–1 and National Institute of Standards and Technology Special Publication 800–76–1, "Biometric Data Specification for Personal Identity Verification" (*see http://csrc.nist.gov/publications/nistpubs/800-76-1/SP800-76-1_012407.pdf*).

(vi) In coordination with the Executive Manager for DoD Biometrics and the Office of the USD(AT&L), implement the capability to obtain two segmented images (primary and secondary) fingerprint minutia from the full 10-print fingerprints captured as part of the initial background investigation process for CAC issuance.

(vii) Maintain a capability for a CAC holder to reset or unlock PINs from a system outside of the CAC issuance infrastructure.

(2) The Executive Manager for DoD Biometrics shall:

(i) Establish biometric standards for the collection, storage, capture, and subsequent transmittal of biometric information in accordance with DoDD 8521.01E, "Department of Defense Biometrics" (*see http://www.dtic.mil/whs/directives/corres/pdf/852101p.pdf*).

(ii) In coordination with the Offices of the USD(P&R) and USD(I) and the DoD Components, establish capability for biometric capture and enrollment operations to support CAC issuance in accordance with DoD 5400.11–R and National Institute of Standards and Technology Special Publication 800–76–1.

(3) The Identity Protection and Management Senior Coordinating Group shall:

(i) Monitor the CAC and identity management related activities outlined within this part in accordance with DoDD 1000.25.

(ii) Maintain a configuration management process for the CAC and its related components to monitor DoD compliance with FIPS Publication 201–1.

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19315 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2010–HA–0033]

RIN 0720–AB44

TRICARE: Unfortunate Sequelae From Noncovered Services in a Military Treatment Facility

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is publishing this proposed rule to allow coverage for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in a Military Treatment Facility (MTF), when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications. This proposed rule is necessary to protect TRICARE beneficiaries from incurring financial hardships due to the current regulatory restrictions that prohibit TRICARE coverage of treatment of the complications resulting from noncovered medical procedures, even when those procedures were conducted in a Department of Defense facility.

DATES: Comments received at the address indicated below by October 5, 2010 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by either 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 or RIN 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: René Morrell, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, (303) 676–3618.

SUPPLEMENTARY INFORMATION: In order to support Graduate Medical Education and maintain provider skill levels, Military Treatment Facility (MTF) providers are frequently required to perform medical procedures that may be excluded from coverage under TRICARE. Unexpected complications (unfortunate sequelae) from these procedures may result and, in those instances where the MTFs are unable to provide the appropriate level of care necessary for the proper treatment of these complications, the MTF Commander must refer beneficiaries for treatment outside the MTF. Under current regulatory provisions, TRICARE is unable to cover treatment of the complications resulting from noncovered procedures. When beneficiaries require treatment outside the MTF for these complications, arising from noncovered procedures, they are responsible for payment for this necessary treatment resulting in significant financial hardship. This proposed rule will address that unfortunate situation by allowing coverage of treatment for the complications resulting from noncovered treatment provided in an MTF when the original procedure was authorized by the MTF Commander. The specific procedures for approval of this treatment will be addressed in the TRICARE Policy Manual rather than in the regulation to ensure that this information is current and easily accessible. TRICARE manuals may be accessed at *http//:www.tricare.mil.*

Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

Section 801 of title 5, United States Code, and Executive Order 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not a major rule or significant regulatory action.

Public Law 104–4, Section 202, "*Unfunded Mandates Reform Act*"

Section 202 of Public Law 104–4, "Unfunded Mandates Reform Act," requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Public Law 96–354, "*Regulatory Flexibility Act*" *(RFA) (5 U.S.C. 601)*

Public Law 96–354, "Regulatory Flexibility Act" (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

This rule does not contain a "collection of information" requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

Executive Order 13132, "*Federalism*"

Executive Order 13132, "Federalism," requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this proposed rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.4(e)(9) is revised to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(9) *Complications (unfortunate sequelae) resulting from noncovered initial surgery or treatment.*

(i) Benefits are available for otherwise covered services and supplies required in the treatment of complications resulting from a noncovered incident of treatment (such as nonadjunctive dental care and cosmetic surgery) but only if the later complication represents a separate medical condition such as a systemic infection, cardiac arrest, and acute drug reaction. Benefits may not be extended for any later care or procedures related to the complication that essentially is similar to the initial noncovered care. An example of complications similar to the initial episode of care (and thus not covered) would be repair of facial scarring resulting from dermabrasion for acne.

(ii) Benefits are available for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in a Military Treatment Facility (MTF), when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications, according to the guidelines adopted by the Director, TMA, or a designee.

* * * * *

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19310 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 1039, 1042, 1065, and 1068

[EPA–HQ–OAR–2010–0295, FRL–9185–7]

RIN 2060–AP67

Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On June 8, 2010, EPA proposed amendments to the standards of performance for stationary compression ignition and spark ignition internal combustion engines. In this

notice, we are announcing a 30-day extension of the public comment period for the proposal.

DATES: Comments must be received on or before September 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0295, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send to: EPA Docket Center (6102T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0295. We also rely on documents in Docket ID Nos. EPA–HQ–OAR–2005–0029 and EPA–HQ–OAR–2003–0190 and incorporate those dockets into the record for this proposed rule. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0295. All documents in the docket are listed in the *http://www.regulations.gov* index. We also rely on documents in Docket ID Nos. EPA–HQ–OAR–2005–0029 and EPA–HQ–OAR–2003–0190 and incorporate those dockets into the record for this proposed rule. 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 hardcopy at the EPA DocketCenter, EPA West, Room 3444, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–2469; *facsimile number:* (919) 541–5450; *e-mail address:* "*king.melanie@epa.gov*."

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the notice of proposed rulemaking published in the **Federal Register** on June 8, 2010 (75 FR 32612). That notice proposed revisions to the standards of performance for stationary compression ignition and spark ignition internal combustion engines.

After publication of the proposed rule, EPA received requests from the American Petroleum Institute and the Alaska Department of Environmental Conservation for a 30-day extension of the comment period for the proposed rule. The requestors indicated that an extended comment period was necessary to allow time for a more thorough evaluation of the proposal and development of a complete set of comments.

The letters requesting an extension to the comment period can be found in the docket. EPA is hereby extending the comment period, which was set to end on August 9, 2010, to September 8, 2010.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping.

40 CFR Part 1039

Administrative practice and procedure, Air pollution control.

40 CFR Part 1042

Administrative practice and procedure, Air pollution control.

40 CFR Part 1065

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Administrative practice and procedure, Air pollution control, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: August 2, 2010.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–19414 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0006; FRL–9185–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Intent To Delete the Peter Cooper Corporation (Markhams) Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA), Region 2 is issuing a Notice of Intent to Delete the Peter Cooper Corporation (Markhams) Superfund Site (Markhams Site) located in the Town of Dayton, Cattaraugus County, New York from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section

105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New York, through the Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning this Site must be received by September 7, 2010.

ADDRESSES: Written comments should be addressed to Michael Basile, Community Involvement Coordinator, USEPA, Western NY Public Information Office, 186 Exchange Place, Buffalo, New York 14204–2026, 716–551–4410.

FOR FURTHER INFORMATION CONTACT: Sherrel D. Henry, Remedial Project Manager, U.S. EPA, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4273.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Peter Cooper Corporation (Markhams) Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion, which is located in the Rules section of this **Federal Register**. For additional information, see Direct Final Notice of Deletion which is located in the Rules section of the **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, NY 10007–1866. (212) 637–4308. Monday through Friday: 9 a.m. through 5 p.m.

or

Town of Dayton, Town Building, 9100 Route 62, South Dayton, New York 14138. (716) 532–9449. Monday through Friday: 9 a.m. through 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 25, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–19420 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 151
Friday, August 6, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Assembly of the Administrative Conference; Filing of Advisory Committee Charter

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Administrative Conference of the United States will file an advisory committee charter for the Assembly of the Administrative Conference, in accordance with the Administrative Conference Act (as amended by the Regulatory Improvement Act of 2007) and the Federal Advisory Committee Act of 1972. The filing will take place 15 days after publication of this notice in the **Federal Register**.

DATES: August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Sherland Peterson, Executive Assistant to the Chairman, Administrative Conference of the United States, 202–326–2305.

SUPPLEMENTARY INFORMATION: The purpose of the Assembly is to adopt recommendations for the improvement of administrative procedures in Federal agencies. The objectives of these recommendations are to ensure that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest, to promote more effective public participation and efficiency in the rulemaking process, to reduce unnecessary litigation in the regulatory process, to improve the use of science in the regulatory process, and to improve the effectiveness of laws applicable to the regulatory process. In enacting the Administrative Conference Act, as amended, Congress has determined that the Assembly is necessary and in the public interest. The charter is appended to this notice.

Dated: July 28, 2010.

Paul R. Verkuil,

Chairman.

Appendix A—Federal Advisory Committee Charter

Assembly of the Administrative Conference of the United States Federal Advisory Committee Charter

1. Committee's Official Designation

Assembly of the Administrative Conference of the United States (Assembly).

2. Authority

The Assembly was established by the Administrative Conference Act, as amended, 5 U.S.C. 591 *et seq. See also* Regulatory Improvement Act of 2007, Public Law 110–290, *codified at* 5 U.S.C. 596 (authorizing appropriations for the Administrative Conference of the United States (ACUS) through fiscal year 2011). The Assembly is chartered as an advisory committee in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App (FACA).

3. Objectives and Scope of Activities

The Assembly adopts recommendations for the improvement of administrative procedure in federal agencies. The objectives of these recommendations are to ensure that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest, to promote more effective public participation and efficiency in the rulemaking process, to reduce unnecessary litigation in the regulatory process, to improve the use of science in the regulatory process, and to improve the effectiveness of laws applicable to the regulatory process.

4. Description of Duties

The Assembly reviews, evaluates, and votes on whether to approve proposals, reports, and/or recommendations of its committees pursuant to its bylaws established under the authority of 5 U.S.C. 595(2). The Assembly operates exclusively in an advisory capacity.

5. Agency or Official to Whom the Assembly Reports

Recommendations adopted by the Assembly are included in the annual report required to be submitted by the Chairman of ACUS to the President and Congress, and such interim reports as the Chairman considers desirable. 5 U.S.C. 595(c). Such recommendations may also be provided to administrative agencies, collectively or individually, or to the Judicial Conference of the United States. *Id.* § 594(1).

6. Support

The Assembly receives support services from ACUS.

7. Estimated Annual Operating Costs and Staff Years

The estimated annual fiscal year cost to operate the Assembly is estimated at $250,000, including 1.8 full-time equivalent staff years.

8. Designated Federal Officer (DFO)

The DFO (and Alternate DFOs) will be appointed by the Chairman of ACUS and will be full-time Federal employees, appointed in accordance with agency procedures. The DFO or an Alternate DFO will call and attend all meetings of the Assembly and any subcommittees established under the ACUS bylaws and prepare their agendas in accordance with the provisions of the Administrative Conference Act, as amended, and is authorized to adjourn any such meeting whenever he or she determines it to be in the public interest.

9. Estimated Number and Frequency of Meetings

The Assembly will meet approximately twice a year. There will be approximately six standing subcommittees of the Assembly, and from time to time additional special subcommittees, established under the authority of the bylaws of ACUS. Each such subcommittee will meet approximately four times a year. All meetings of the Assembly and such subcommittees will be open to the public and announced in accordance with FACA.

10. Duration

The Administrative Conference Act, as amended, prescribes continuing duration for ACUS.

11. Termination

This charter terminates two years from the date of filing. Pursuant to Section 14 of FACA, ACUS will file a charter for the Assembly upon the expiration of two years from the date hereof. Neither the Assembly nor its subcommittees will meet without a charter filed in accordance with FACA.

12. Membership and Designation

The appointment and designation of members of the Assembly is prescribed by the Administrative Conference Act, as amended. Under that Act, it must have between 75 and 101 members. These include the Chairman (a five year term), the ten Council members appointed by the President (three year terms), designees or appointees from Federal Executive departments, agencies, and independent regulatory boards and commissions (no fixed terms), and not more than 40 other members appointed by the Chairman with the approval of the Council (two year terms), who must "provide broad representation of the views of private citizens and utilize diverse experience." 5 U.S.C. 593(b)(6). These members "shall be members of the practicing bar, scholars in the field of administrative law or government, or

others specially informed by knowledge and experience with respect to Federal administrative procedure." *Id.* The by-laws impose limits on the number of continuous terms of service by non-Government members. Council members may continue to serve until their successors are appointed. Under the by-laws, each member of the Assembly is expected to participate in all respects according to his or her own views and not necessarily as a representative of any agency or other group or organization, public or private. Accordingly, Non-Government members of the Assembly have been deemed to be Special Government Employees, and not Representatives.

Members, except the Chairman, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of title 5 for individuals serving without pay, subject to availability of funds.

Under the by-laws, and subject to the approval of the Council, the Chairman may appoint senior fellows, special counsels, and liaison representatives to the Assembly and its subcommittees. Such appointees have all of the rights of members of the Assembly, but may not vote, except in committee deliberations, where the committee chairman generally has the authority to confer voting rights upon such appointees. All such appointees who are non-Government appointees have been deemed to be Special Government Employees, and not Representatives.

13. Subcommittees

The Assembly has authority to adopt by-laws and regulations that create such subcommittees as it considers necessary for the conduct of studies and the development of recommendations for consideration by the Assembly. 5 U.S.C. 595(a)(2). Subcommittee members are appointed by the Chairman with the approval of the Council. *Id.* § 595(c)(5). All subcommittee members are either members of the Assembly or senior fellows, special counsels, or liaison representatives as described above. All proposed recommendations of subcommittees will be considered by the Assembly prior to adoption.

14. Recordkeeping

The records made available to or prepared for or by the Assembly or its subcommittees shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. Such records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

15. Filing Date

August 23, 2010.

[FR Doc. 2010–19445 Filed 8–5–10; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2010–0020]

Notice of Request for a Revision of a Currently Approved Information Collection (Listeria Monocytogenes Control for Ready-to-Eat Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a revision of a currently approved information collection regarding *Listeria monocytogenes* (*L. monocytogenes*) for ready-to-eat (RTE) meat and poultry products because the OMB approval will expire on November 30, 2010, and to reflect its most recent plant data, which supports an estimate of fewer total burden hours.

DATES: Comments on this notice must be received on or before October 5, 2010.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand-or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2175 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0020. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065 South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Listeria Monocytogenes Control for Ready-to-Eat Products.

OMB Number: 0583–0132.

Expiration Date of Approval: 11/30/2010.

Type of Request: Revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS regulations (9 CFR 430.4) require official establishments that produce post-lethality exposed RTE meat and poultry products to take measures to prevent product adulteration by the pathogen *L. monocytogenes.*

Official establishments that produce these RTE meat and poultry products are required to at least annually furnish FSIS with information on the production volume of RTE products affected by the regulations and the control measures used by the establishments (9 CFR 430.4(d)).

RTE establishments may have to develop microbiological sampling and testing plans to support the efficacy of sanitation controls. RTE establishments develop microbiological sampling plans to ensure that their sanitation procedures are adequate (9 CFR 430.4(b)(2)(iii), 430.4(b)(3), 430.4(c)(1) and 430.4(c)(7)).

RTE establishments sample and test food-contact surfaces to verify that their *L. monocytogenes* controls are working (9 CFR 430.4(b)(2)(iii)(A) and (b)(3)(i)(A)).

RTE establishments that produce a deli product or a hot dog product must hold lots of product after obtaining a second positive test for *L. monocytogenes* or indicator organisms on a food contact surface in the post-lethality processing environment until the establishment corrects the problem indicated by the test result (9 CFR 430.4(b)(3)(ii)(B)).

FSIS is requesting a revision of an approved information collection addressing paperwork requirements regarding *L. monocytogenes* control. The Agency is revising the *L. monocytogenes*

controls information collection based on its most recent plant data, which support a finding of fewer total burden hours than there are in the approved information collection.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 11.2 hours per annum to collect and report this information.

Respondents: RTE establishments.

Estimated No. of Respondents: 2,129.

Estimated No. of Annual Responses per Respondent: 37,720.

Estimated Total Annual Burden on Respondents: 23,733 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250, (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS'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, 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 both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

USDA Statement of Non-Discrimination

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2010_Notices_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to Agency constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: July 30, 2010.

Alfred V. Almanza,

Administrator.

[FR Doc. 2010–19341 Filed 8–5–10; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funding Availability (NOFA) for Renewable Energy Feasibility Studies Grants Under the Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Energy for America Program, formerly section 9006 under the 2002 Farm Bill, is composed of several types of grants and guaranteed loan programs. These are: Guaranteed loans and grants for the development/construction of renewable energy systems and for energy efficiency improvement projects; grants for conducting energy audits; grants for conducting renewable energy development assistance; and grants for conducting renewable energy feasibility studies.

The Agency is implementing the Rural Energy for America Program (REAP) for Fiscal Year 2010 through the publication of three REAP notices:

- Renewable energy system and energy efficiency improvement grants and guaranteed loans;
- Energy audit and renewable energy development assistance grants; and
- Renewable energy feasibility study grants.

This REAP Notice announces the availability of $3,000,000 for fiscal year (FY) 2010 to conduct feasibility studies for renewable energy systems for agriculture producers and rural small businesses. This funding will be available in the form of grants. Funds that are not awarded under this notice will be made available for the Rural Energy for America Program in FY 2011.

Lastly, the Agency intends to publish a proposed rule that will revise the current program at 7 CFR 4280, subpart B to include renewable energy feasibility study grants, and that will add a new subpart C to address energy audit and renewable energy development assistance grants. Together, these two subparts will represent the Rural Energy for America Program as authorized under section 9007 of the Farm Security and Rural Investment Act of 2002 as amended by section 9001 of the Food, Energy, and Conservation Act of 2008. The Agency anticipates publishing final regulations to operate the Rural Energy for America Program in fiscal year 2011.

DATES: Complete applications under this Notice must be received by the appropriate USDA Rural Development

State Office no later than 4:30 local time October 5, 2010. Neither complete nor incomplete applications received after this date and time will be considered for funding in FY 2010, regardless of the postmark on the application.

ADDRESSES: Application materials may be obtained by contacting one of Rural Development's Energy Coordinators or by downloading through *http://www.grants.gov.*

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site. To use Grants.gov, an applicant (unless the applicant is an individual) must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Submit completed paper applications to the Rural Development State Office in the State in which the applicant's proposed project is located.

Rural Development Energy Coordinators

Note: Telephone numbers listed are not toll-free.

Alabama

Quinton Harris, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683. (334) 279–3623. *Quinton.Harris@al.usda.gov.*

Alaska

Dean Stewart, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539. (907) 761–7722. *dean.stewart@ak.usda.gov.*

American Samoa (*See* Hawaii)

Arizona

Alan Watt, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706. (602) 280–8769. *Alan.Watt@az.usda.gov.*

Arkansas

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225. (501) 301–3280. *Tim.Smith@ar.usda.gov.*

California

Philip Brown, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616. (530) 792–5811. *Phil.brown@ca.usda.gov.*

Colorado

April Dahlager, USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215. (720) 544–2909. *april.dahlager@co.usda.gov.*

Commonwealth of the Northern Marianas Islands—CNMI (*See* Hawaii)

Connecticut (*See* Massachusetts)

Delaware/Maryland

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904. (302) 857–3626. *Bruce.Weaver@de.usda.gov.*

Federated States of Micronesia (*See* Hawaii)

Florida/Virgin Islands

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606. (352) 338–3482. *joe.mueller@fl.usda.gov.*

Georgia

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655. (770) 267–1413 ext. 113. *craig.scroggs@ga.usda.gov.*

Guam (*See* Hawaii)

Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/America Samoa/Commonwealth of the Northern Marianas Islands—CNMI

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720. (808) 933–8313. *Tim.Oconnell@hi.usda.gov.*

Idaho

Brian Buch, USDA Rural Development, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709. (208) 378–5623. *Brian.Buch@id.usda.gov.*

Illinois

Molly Hammond, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821. (217) 403–6210. *Molly.Hammond@il.usda.gov.*

Indiana

Jerry Hay, USDA Rural Development, 5975 Lakeside Boulevard, Indianapolis, IN 46278. (812) 873–1100. *Jerry.Hay@in.usda.gov.*

Iowa

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309. (515) 284–4447. *teresa.bomhoff@ia.usda.gov.*

Kansas

David Kramer, USDA Rural Development, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040. (785) 271–2730. *david.kramer@ks.usda.gov.*

Kentucky

Scott Maas, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503. (859) 224–7435. *scott.maas@ky.usda.gov.*

Louisiana

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501. (337) 262–6601, Ext. 133. *Kevin.Boone@la.usda.gov.*

Maine

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405. (207) 990–9168. *john.sheehan@me.usda.gov.*

Maryland (*See* Delaware)

Massachusetts/Rhode Island/Connecticut

Charles W. Dubuc, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002. (401) 826–0842 X 306. *Charles.Dubuc@ma.usda.gov.*

Michigan

Traci J. Smith, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823. (517) 324–5157. *Traci.Smith@mi.usda.gov.*

Minnesota

Lisa L. Noty, USDA Rural Development, 1400 West Main Street, Albert Lea, MN 56007. (507) 373–7960, Ext. 120. *lisa.noty@mn.usda.gov.*

Mississippi

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269. (601) 965–5457. *george.jones@ms.usda.gov.*

Missouri

Matt Moore, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203. (573) 876–9321. *matt.moore@mo.usda.gov.*

Montana

John Guthmiller, USDA Rural Development, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771. (406) 585–2540. *John.Guthmiller@mt.usda.gov.*

Nebraska

Debra Yocum, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508. (402) 437–5554. *Debra.Yocum@ne.usda.gov.*

Nevada

Herb Shedd, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703. (775) 887–1222. *herb.shedd@nv.usda.gov.*

New Hampshire (*See* Vermont)

New Jersey

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054. (856) 787–7752. *Victoria.Fekete@nj.usda.gov.*

New Mexico

Jesse Bopp, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109. (505) 761–4952. *Jesse.bopp@nm.usda.gov.*

New York

Scott Collins, USDA Rural Development, 9025 River Road, Marcy, NY 13403. (315) 736–3316 Ext. 4. *scott.collins@ny.usda.gov.*

North Carolina

David Thigpen, USDA Rural Development, 4405 Bland Rd. Suite 260, Raleigh, NC 27609. (919) 873–2065. *David.Thigpen@nc.usda.gov.*

North Dakota

Dennis Rodin, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737. (701) 530–2068. *Dennis.Rodin@nd.usda.gov*.

Ohio

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418. (614) 255–2424. *Randy.Monhemius@oh.usda.gov*.

Oklahoma

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654. (405) 742–1036. *Jody.harris@ok.usda.gov*.

Oregon

Don Hollis, USDA Rural Development, 200 SE Hailey Ave, Suite 105, Pendleton, OR 97801. (541) 278–8049, Ext. 129. *Don.Hollis@or.usda.gov*.

Pennsylvania

Bernard Linn, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996. (717) 237–2182. *Bernard.Linn@pa.usda.gov*.

Puerto Rico

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106. (787) 766–5091, Ext. 251. *Luis.Garcia@pr.usda.gov*.

Republic of Palau (*See* Hawaii)

Republic of the Marshall Islands (*See* Hawaii)

Rhode Island (*See* Massachusetts)

South Carolina

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201. (803) 253–3150. *Shannon.Legree@sc.usda.gov*.

South Dakota

Douglas Roehl, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350. (605) 352–1145. *doug.roehl@sd.usda.gov*.

Tennessee

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084. (615) 783–1350. *will.dodson@tn.usda.gov*.

Texas

Daniel Torres, USDA Rural Development, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501. (254) 742–9756. *Daniel.Torres@tx.usda.gov*.

Utah

Roger Koon, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138. (801) 524–4301. *Roger.Koon@ut.usda.gov*.

Vermont/New Hampshire

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602. (802) 828–6083. *cheryl.ducharme@vt.usda.gov*.

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229. (804) 287–1594. *Laurette.Tucker@va.usda.gov*.

Virgin Islands (*See* Florida)

Washington

Mary Traxler, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512. (360) 704–7762. *Mary.Traxler@wa.usda.gov*.

West Virginia

Richard E. Satterfield, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500. (304) 284–4874. *Richard.Satterfield@wv.usda.gov.*

Wisconsin

Brenda Heinen, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481. (715) 345–7615, Ext. 139. *Brenda.Heinen@wi.usda.gov*.

Wyoming

Jon Crabtree, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602. (307) 233–6719. *Jon.Crabtree@wy.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this Notice, please contact the USDA Rural Development—Energy Division, Program Branch, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250–3225. *Telephone:* (202) 720–1400.

For program assistance, please contact the applicable Rural Development Energy Coordinator, as provided in the Addresses section of this Notice.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with renewable energy feasibility study grants, as covered in this REAP notice, has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0061.

The information collection requirements associated with renewable energy system and energy efficiency improvement grants and guaranteed loans and with energy audits and renewable energy development assistance grants, which will be addressed in their respective REAP notices, have also been approved by OMB under OMB Control Number 0570–0050 and OMB Control Number 0570–0059, respectively. When the Agency publishes the proposed rule for REAP, it will consolidate the information collection requirements associated with this REAP notice and the other two REAP notices into a single information collection package for OMB approval.

Overview Information

Federal Agency Name. Rural Business-Cooperative Service.

Funding Opportunity Title. Renewable Energy Feasibility Studies Grants under the Rural Energy for America Program.

Announcement Type. Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number. This program is listed in the Catalog of Federal Domestic Assistance under Number 10.868.

DATES. All applications must be completed and received in the appropriate United States Department of Agriculture (USDA) State Rural Development Office no later than 4:30 p.m. local time October 5, 2010, in order to be considered for funding in FY 2010. Applications received after 4:30 p.m. local time October 5, 2010, regardless of the application's postmark, will not be considered for funding in FY 2010.

Availability of Notice. This Notice is available on the USDA Rural Development Web site at: *http://www.rurdev.usda.gov/rbs/busp/REAPFEAS.htm.*

I. Funding Opportunity Description

A. *Purpose.* This Notice is issued pursuant to section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), which amends Title IX of the Farm Security and Rural Investment Act of 2002 (FSRIA) and establishes the Rural Energy for America Program under section 9007 thereof. The 2008 Farm Bill requires the Secretary of Agriculture to create a program to make grants to help agricultural producers and rural small businesses complete feasibility studies for projects that will help meet the Nation's critical energy needs. The grant request may not exceed 25 percent of eligible project costs or $50,000, whichever is less.

B. *Statutory Authority.* This activity (feasibility study) is found in the Rural Energy for America Program, which is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

C. *Definition of Terms.* The following terms and the terms defined in 7 CFR part 4280 are applicable to this Notice. If this Notice and 7 CFR part 4280 both define the same term, that term shall

have the meaning provided in this Notice.

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture.

Departmental regulations. The regulations of the Department of Agriculture's Office of the Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Hydroelectric energy. Electrical energy created by use of various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydropower. Energy created by hydroelectric or ocean energy.

Ocean energy. Energy created by use of various types of moving water including, but not limited to, tidal, wave, current, and thermal changes.

Rated power. The amount of energy that can be created at any given time.

Renewable biomass.

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(B) Would not otherwise be used for higher-value products; and

(C) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(ii) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Renewable energy. Energy derived from:

(i) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric source; or

(ii) Hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric energy sources.

RES. Renewable energy system.

Small hydropower. A hydropower project for which the rated power of the system is 30 megawatts or less.

II. Funding Information

A. *Available Funds.* The amount of grant funds available for renewable energy system feasibility studies in FY 2010 is $3,000,000.

Based on the quality of the applications received under this REAP notice, the Agency reserves the right, at its discretion, to move funds from this Notice to fund applications received under the other two REAP notices. Conversely, the Agency may, at its discretion, move money for the other two REAP notices to fund applications received under this REAP notice. The Agency's ability to move funds is subject to the limitation contained in section 9007(c)(3)(B) of the Farm Security and Rural Investment Act of 2002, which limits funding for feasibility studies to not exceed more than 10 percent of the funds made available to carry out the total amount made available under this REAP notice and the renewable energy system and energy efficiency improvements REAP notice.

B. *Number of awards.* The number of awards will depend on the number of eligible applicants participating in the feasibility study grant portion of the Rural Energy for America Program.

C. *Grant Funding Limitations.* For the purposes of this Notice, the maximum amount of grant assistance to one individual or entity will not exceed $750,000 for FY 2010 based on the total amount of renewable energy system, energy efficiency improvement, and renewable energy system feasibility study grants awarded to that individual or entity under the Rural Energy for America Program. The Agency will not use more than 10 percent of funds for grants to conduct renewable energy system feasibility studies.

D. *Types of Instrument.* Grant.

III. Application Submission Information

Applicants seeking to participate in this program must submit applications in accordance with this Notice and 7 CFR part 4280, subpart B, as applicable. Applicants must submit complete applications in order to be considered. Applications must be from the prospective owner(s) of the renewable energy system for which the feasibility study grant is sought. Applications from other entities (*e.g.,* entities that would be conducting the feasibility study and are not owners) will not be accepted. Finally, note that for the Agency to consider an application, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1940 subpart G.

A. Where To Obtain Applications

Applicants may obtain applications from applicable Rural Development Energy Coordinators, as provided in the **ADDRESSES** section of this Notice. In addition, applicants may access the electronic grant application for the Rural Energy for America Program at *http://www.Grants.gov.* To locate the downloadable application package for this program, the applicant must use the program's CFDA Number (*i.e.,* 10.868) or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov.* To use Grants.gov, all applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, (unless the applicant is an individual) which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.*

B. When To Submit

Submit applications to the appropriate USDA Rural Development State Office by October 5, 2010. All applications must be received at the appropriate State Office by 4:30 p.m. local time on the deadline date.

C. Where To Submit

Applications are to be submitted to the Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of Rural Development Energy Coordinators is provided in the **ADDRESSES** section of this Notice. Alternatively, applicants may submit their applications to the Agency via the Grants.gov Web site.

D. How To Submit

Applications may be submitted either as hard copy to the appropriate Rural Development Energy Coordinator or

electronically using the government-wide Grants.gov Web site. Users of Grants.gov who download a copy of the application package may complete it off line and then upload and submit the application via the Grants.gov site, including all information typically included on the application, and all necessary assurances and certifications. After electronically submitting an application through the Web site, the applicant will receive an automated acknowledgement from Grants.gov that contains a Grants.gov tracking number.

E. Other Submission Requirements and Information

(1) *Grants.gov.* When you enter the Grants.gov site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that applicants do not wait until the application deadline date to begin the application process through Grants.gov.

(2) *Original signatures.* USDA Rural Development may request that the applicant provide original signatures on forms submitted through Grants.gov at a later date.

(3) *Intergovernmental review.* The Rural Energy for America Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

IV. Program Provisions

This section of the Notice identifies the procedures the Agency will use to process and select feasibility study applications, award grants, and administer such financial assistance.

A. Eligibility

Applicants and their applications are subject to the provisions of this Notice and to the grant provisions of 7 CFR part 4280, subpart B, as may be modified under this Notice.

(1) *Applicant eligibility.* To be eligible for a feasibility study grant under this Notice, the applicant must:

(i) Be a rural small business or agricultural producer as defined in 7 CFR 4280.103,

(ii) Meet the eligibility criteria of 7 CFR 4280.107; and

(iii) Be the prospective owner of the renewable energy system for which the feasibility study grant is sought.

(2) *Project eligibility.* Feasibility studies must be for a renewable energy system that:

(i) Is for the purchase, installation, expansion, or other energy-related improvement of a renewable energy system;

(ii) Is located in a rural area as identified in 7 CFR 4280.108(d); and

(iii) Is for technology that is pre-commercial or commercially available, and that is replicable.

B. Grant Funding

The maximum amount for a feasibility study grant under this Notice is $50,000 or 25 percent of the eligible project cost (as described below) of the study, whichever is less. The Grantee will have 2 years from the date of the grant agreement to provide the Agency with a complete and acceptable feasibility study and to request disbursement of the funds as described in Section IV(K) of this Notice. If the Grantee does not submit to the Agency a complete and acceptable feasibility study within this 2 year period, the grant is subject to termination by and reimbursement to the Agency according to Departmental Regulations.

C. Project Costs

(1) Eligible project costs will be considered by the Agency when determining the amount of the grant and include:

(i) Those costs incurred after the application submittal date; and

(ii) Specific to the development of the feasibility study, (refer to Appendix A for further information on the content of a feasibility study) including, but not limited to:

(A) Resource assessment;

(B) Transmission study; and

(C) Environmental study.

(2) Ineligible grant purposes include:

(i) Costs associated with selection of engineering, architectural, or environmental services;

(ii) Designing, bidding, or contract development for the proposed facility;

(iii) Permitting and other licensing costs required to construct the facility;

(iv) Conducting industry-level feasibility studies also known as feasibility study templates or guides because the assistance is not provided to a specific project; and

(v) Pay for any goods or services provided by a person or entity who has a conflict of interest as described in 7 CFR 4280.106.

D. Application Restrictions

Feasibility study applications:

(1) Can apply for only one renewable energy system feasibility study project under this Notice;

(2) Have completed the environmental review process according to 7 CFR 4280.114(d);

(3) Which are complete will be eligible for funding consideration;

(4) Can be submitted for a modification to an existing renewable energy system (*e.g.,* for the expansion portion of an existing wind farm);

(5) Cannot be submitted for a renewable energy system project for which a feasibility study has been conducted or funded under any Federal or State program; and

(6) Cannot be submitted in FY 2010 for a RES project if an RES application for the same renewable energy system is submitted in FY 2010 and vice versa.

E. Applications

An original and one complete copy of each application are required that follow the outline below. Each application must include a Table of Contents with clear pagination and chapter identification and the following:

(1) Form SF–424, "Application for Federal Assistance;"

(2) Form SF–424C, "Budget Information—Construction Programs;"

(3) Form SF–424D, "Assurances—Construction Programs;"

(4) Form RD 1940–20, "Request for Environmental Information" (if applicable);

(5) If an entity, one copy of the applicant's organizational documents; and

(6) A proposed work plan, which includes:

(i) A brief description of the proposed system the feasibility study will evaluate;

(ii) A description of the feasibility study to be conducted. An acceptable feasibility study is outlined in Appendix A to this Notice. Applicants must require those conducting the feasibility study to consider and document within the feasibility study the important environmental factors within the planning area and the potential environmental impacts of the project for which the feasibility study is being conducted, as well as the alternatives considered;

(iii) The timeframe for completion of the feasibility study;

(vi) The experience of the company/individual completing the feasibility study, including the number of similar projects the company/individual has performed, the number of years the company has been performing a similar service, and corresponding resumes;

(v) The source and amount of other project funds needs to be clearly identified. Agency approved written documentation/confirmation from any third party committing a specific amount of such funds is required. Documentation includes such items as bank statements, lender commitment letters, and so forth; and

(vi) Sufficient financial information to allow the Agency to determine the applicant's size. All information submitted under this paragraph must be substantiated by authoritative records:

(A) If the applicant is a rural small businesses, provide sufficient information to determine its total annual receipts and number of employees and the same information for any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. The information provided must be sufficient for the Agency to make a determination of business size as defined by the Small Business Administration; and

(B) If the applicant is an agricultural producer, provide the gross market value of the agricultural products, gross agricultural income, and gross nonfarm income of the applicant for the calendar year preceding the year in which the application is submitted;

(7) Any Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372;

(8) A certification that the applicant has not received any other Federal or State assistance for the same RES project that is the subject of the application; and

(9) A certification that the applicant has not received any other Federal or State assistance for a feasibility study for the subject renewable energy system.

F. Evaluation of Applications

Feasibility study applications submitted under this Notice will be evaluated by the applicable Energy Coordinator for eligibility, completeness, and scoring.

(1) *General review.* The Agency will evaluate each application and make a determination as to whether the applicant is eligible, the proposed grant is for an eligible feasibility study, and the proposed grant complies with all applicable statutes and regulations.

(i) *Applicant eligibility.* The Agency will first determine whether the entity is eligible to compete for a feasibility study grant. Applications for applicants determined by the Agency not to be eligible will not be processed further. The Agency will determine applicant eligibility based on the criteria specified in this section.

(ii) *Proposal eligibility.* After determining applicant eligibility, the Agency will review the application to determine if the proposal is eligible. Applications determined by the Agency not to be eligible will not be processed further. The Agency will determine whether the application contains certification by the applicant that the applicant has neither sought nor received any other Federal or State assistance for a feasibility study on the subject facility. If the application does not contain such certification, it is an ineligible application and the Agency will stop processing the application. If the application contains such certification, the Agency will continue processing it.

(2) *Ineligible applicants and applications.* If either the applicant or the application is ineligible, the Agency will inform the applicant in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(3) *Incomplete applications.* If the application is incomplete, the Agency will return it to the applicant. The Agency will identify those parts of the application that are incomplete. The applicant may resubmit the application, as long as it is received by the appropriate USDA Rural Development State Office no later than 4:30 local time October 5, 2010.

G. Scoring Applications

The Agency will assign a score to each eligible application as follows:

(1) *Energy replacement or generation.* The project can be for either replacement or generation, but not both. A maximum of 25 points can be awarded under this section.

(i) *Energy replacement.* 25 points will be awarded if proposed project will offset a portion or all of the applicant's energy needs.

(ii) *Energy generation.* 15 points will be awarded if the proposed renewable energy system is intended primarily for production of energy for sale.

(2) *Commitment of funds for the feasibility study.* Other Federal or State assistance for only the feasibility study would make the request ineligible. Appropriate documentation must verify commitment of funds. A maximum of 10 points can be awarded under this section.

(i) 10 points—100 percent of matching funds.

(ii) 7.5 points—75 percent up to, but not including 100 percent of matching funds.

(iii) 5 points—50 percent up to, but not including 75 percent of matching funds.

(iv) 0 points—less than 50 percent of matching funds.

(3) *Designation as a Small agricultural producer/very small business.* An applicant will be considered either an agricultural producer or rural small business. No applicant will be considered as both. Points will only be awarded under either paragraph (3)(i) or (3)(ii). A maximum of 20 points can be awarded under this section.

(i) For an Agricultural Producer:

(A) 10 points will be awarded if the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year, or

(B) 20 points will be awarded if the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year.

(ii) For a Rural Small Business, 20 points will be awarded if the applicant is a very small business, as defined in 7 CFR 4280.103.

(4) *Experience and qualifications of the entity identified to perform the feasibility study.* A maximum of 15 points can be awarded under this section.

(i) 15 points will be awarded if the entity has 5 or more years experience in the field of study for the technology being proposed.

(ii) 7.5 points will be awarded if the entity has 2 or more years, but less than 5 years, experience in the field of study for the technology field being proposed.

(iii) 0 points will be awarded if the entity has less than 2 years experience in the field of study for the technology field being proposed.

(5) *Size of feasibility study grant request.* A maximum of 20 points can be awarded under this section.

(i) 20 points will be awarded if the feasibility study request is $10,000 or less.

(ii) 10 points will be awarded if the feasibility study request is more than $10,000 up to $25,000.

(iii) 0 points will be awarded if the feasibility study request is greater than $25,000.

(6) *Resources to implement project.* Considering the technology being proposed, the applicant may qualify for other local or State programs to assist in the construction, or operation of the facility. These programs will benefit the applicant and/or proposed project during or after the facility is constructed and operational. A maximum of 10 points can be awarded under this section.

(i) 5 points will be awarded if the applicant has identified local programs.

(ii) 5 points will be awarded if the applicant has identified State programs.

H. Award Process

The Agency will use the following process to determine which grants receive funding under this Notice.

(1) *Ranking of applications.* All scored applications will be ranked by the Agency as soon after the application deadline as possible. All applications that are ranked will be considered for selection for funding.

(2) *Selection of applications for funding.* Applications will be selected based on their rank in accordance with their scores. If, after the majority of applications have been funded, insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Agency must determine the project is financially feasible at the lower amount. The Agency will notify, in writing, applicants whose applications have been selected for funding.

(3) *Disposition of ranked applications not funded.* Based on the availability of funding, a ranked application may not be funded in the fiscal year in which it was submitted. Such ranked applications will not be carried forward into the next fiscal year and the Agency will notify the applicant in writing.

I. Actions Prior to Grant Closing

(1) *Environmental.* If construction is a component of the study, the appropriate level of environmental assessment must be completed prior to the obligation of funds. All feasibility study grants made under this Notice are subject to the requirements of subpart G of part 1940 of this title. When construction is not a component of the study, feasibility studies are considered planning assistance, which are categorically excluded from the environmental review process by § 1940.310 of this title.

(2) *Changes in project cost or scope.* If there is a significant reduction in project cost or changes in project scope, the applicant's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other selection factors; however, other factors, including Agency regulations and Notices used at the time of grant approval, will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(3) *Evidence of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds shall present evidence of the commitment of these funds from such other sources prior to disbursement of grant funds.

J. Approval Process

(1) *Letter of conditions.* The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made. The Notice will include those matters necessary to ensure that the proposed grant is completed in accordance with the terms of the scope of work and budget, that grant funds are expended for the feasibility study, and that the applicable requirements prescribed in the relevant Departmental Regulations are complied with. The Letter of Conditions will be sent to the applicant.

(2) *Letter of Intent to Meet Conditions.* Upon reviewing the conditions and requirements in the Letter of Conditions, the applicant must complete, sign and return a Form RD 1942–46, "Letter of Intent to Meet Conditions," to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the applicant before the application will be further processed.

(3) *Grant agreement, forms, and certifications.* Prior to grant disbursement, but after grant obligation, the applicant must complete, sign, and return a Grant Agreement, which is attached to this Notice as Appendix B. In addition, the following forms and certifications must be submitted prior to grant approval:

(i) Certification that the feasibility study grant will be for a renewable energy system project that is located in a rural area;

(ii) Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions;"

(iii) Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," including certification from any person or entity you do business with as a result of this government assistance that they are not debarred or suspended from government assistance;

(iv) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals;"

(v) Form SF–LLL, "Disclosure Form to Report Lobbying" or Exhibit A–1 of RD Instruction 1940–Q, "Certification for Contracts, Grants, and Loans;" and

(vi) Form RD 400–4, "Assurance Agreement."

(4) *Grant approval.* Form RD 1940–1 must be signed by the applicant.

(i) The applicant will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and a Grant Agreement (*see* Appendix B to this Notice).

(ii) The Grantee must abide by all requirements contained in the Grant Agreement, this Notice, and any other applicable Federal statutes or regulations. Failure to follow the requirements may result in termination of the grant and adoption of other available remedies.

K. Fund Disbursement

Grant funds will be expended on a pro rata basis with matching funds.

(1) Requests for reimbursement may be submitted monthly or more frequently if authorized to do so by the Agency. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) The Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payment shall be made by electronic funds transfer.

(4) Standard Form 270, "Request for Advance or Reimbursement," or other format prescribed by the Agency shall be used to request grant reimbursements.

(5) For renewable energy system feasibility studies, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until a feasibility study acceptable to the Agency has been submitted.

L. Deobligation of Grant Funds

Funds remaining after all costs incident to the project have been paid or provided for are subject to deobligation.

M. Monitoring and Reporting Project Performance

(1) *Monitoring of project.* Grantees are responsible for ensuring all activities are performed within the approved scope of work and that funds are only used for approved purposes. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, financial resources appropriately expended by contractors (if applicable), and any other performance objectives identified in the scope of work are being achieved. To

the extent resources are available, the Agency will monitor Grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of Grantees neither relieves the Grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only nor provides recourse or a defense to the Grantee should the Grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(2) *Federal financial reports.* A SF–425, "Federal Financial Report," and a project performance report will be required of all Grantees on a semiannual basis. The Grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by the Grantee and approved by the Agency. The final Federal financial report must be submitted to the Agency within 90 days after the feasibility study has been completed.

(3) *Performance reports.* Grantees must submit to the Agency, in writing, semiannual performance reports and a final performance report. Grantees are to submit an original of each report to the Agency.

(i) *Semiannual performance reports.* Each semiannual performance report shall describe current progress and identify any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives or prevent meeting time frame for completion of the feasibility study within 2 years. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation.

(ii) *Final performance report.* A final performance report, which will serve as the last semiannual performance report, will be required within 90 days after the feasibility study has been completed. The final performance report shall summarize any problems, delays, or adverse conditions, if any, which have affected the project objectives or prevented meeting time frames for completion of the feasibility study. The final performance report should indicate if the Grantee intends to proceed with the construction of the project.

(4) *Final deliverables.* Upon completion of the feasibility study, the Grantee shall submit the following to the Agency:

(i) The project feasibility study; and

(ii) SF–270, "Request for Advance or Reimbursement."

(5) *Reports required after feasibility study completion.* Beginning the first full year after the feasibility study has been completed, Grantees shall report annually for 2 years on the following:

(i) Is the renewable energy system project for which the feasibility study was conducted underway? If 'yes,' describe how far along the renewable energy system project is (*e.g.,* financing has been secured, site has been secured, construction contracts are in place, project completed).

(ii) Is the renewable energy system project complete? If so, what is the actual amount of energy being produced?

(6) *Other reports.* For clarification purposes, the Agency may request any additional project and/or performance data for the project for which grant funds have been received.

N. Financial Management System and Records

Grantees are required to maintain a financial management system and records in accordance with 7 CFR 3015.

O. Grant Servicing

Grants will be serviced in accordance with Departmental Regulations and 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the project records and operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

P. Programmatic Changes

The Grantee shall obtain prior Agency approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

Q. Transfer of Obligations

Subject to Agency approval, an obligation of funds established for a Grantee may be transferred to a different (substituted) Grantee provided:

(1) The substituted Grantee

(i) Is eligible;

(ii) Has a close and genuine relationship with the original Grantee; and

(iii) Has the authority to receive the assistance approved for the original Grantee; and

(2) The type of renewable energy technology and the scope of the project for which the Agency funds will be used remain unchanged.

R. Grant Close Out and Related Activities

In addition to the requirements specified in the Departmental regulations, failure to submit satisfactory reports on time under the provisions of the Monitoring and Reporting Project Performance requirements of this Notice may result in the suspension or termination of a grant. The provisions of this section apply to grants and sub-grants.

V. Administrative Information Applicable to this Notice

A. Notifications

(1) *Eligibility.* If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant in writing. If an applicant is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as to the reason(s) the applicant was rejected. Such applicant will have appeal rights as specified in this Notice.

(2) *Award.* Each applicant will be notified of the Agency's decision on their application.

B. Administrative and National Policy Requirements

(1) *Review or appeal rights.* A person may seek a review of an adverse Agency decision under this Notice from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(2) *Notification.* If at any time prior to application approval it is decided that favorable action will not be taken on an application, the Agency will notify the applicant in writing of the decision and of the reasons why the request was not favorably considered. The notification will inform applicant of their right to informal review, mediation, and appeal of the decision in accordance with 7 CFR part 11.

C. Exception Authority

Except as specified in paragraphs (1) through (3) of this section, the Administrator may make exceptions to any requirement or provision of this Notice, if such exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(1) *Applicant eligibility.* No exception to applicant eligibility can be made.

(2) *Project eligibility.* No exception to project eligibility can be made.

(3) *Rural area definition.* No exception to the definition of rural area can be made.

D. Member or Delegate Clause

No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

E. Other USDA Regulations

Feasibility study grants awarded under this Notice are subject to the provisions of the Departmental Regulations, as applicable, which are incorporated by reference herein.

VI. Agency Contacts

Notice Contact. For further information about this Notice, please contact the USDA Rural Development-Energy Division, Program Branch, STOP 3225, Room 6867, 1400 Independence Avenue, SW., Washington, DC 20250–3225. *Telephone:* (202) 720–1400.

For assistance on this Notice, please contact one of Rural Development's Energy Coordinators, as provided in the Addresses section of this Notice.

VII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

VIII. Civil Rights Compliance Requirements

All grants and guaranteed loans made under this Notice are subject to title VI of the Civil Rights Act of 1964 and part 1901, subpart E of this title.

Dated: August 2, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

Appendix A—Renewable Energy System Feasibility Study

Elements in an acceptable feasibility study include, but are not necessarily limited to, the following elements:

- Executive Summary,
- Economic Feasibility,
- Market Feasibility,
- Technical Feasibility (including the appropriate technical report),
- Financial Feasibility,
- Management Feasibility, and
- Qualifications.

As noted above, both a technical report for the project and an economic analysis of the project are required as part of the feasibility study. The technical report to be provided must conform to that required under 7 CFR part 4280, as applicable or, if the renewable energy system is a hydropower project, under this Notice. The following paragraphs describe the contents that each section of the feasibility study must contain, as applicable.

Executive Summary. Provide an introduction and overview of the project. In the overview, describe the nature and scope of the proposed project, including purpose, project location, design features, capacity, and estimated total capital cost. Include a summary of each of the elements of the feasibility study, including:

- Economic feasibility determinations,
- Market feasibility determinations,
- Technical feasibility determinations,
- Financial feasibility determinations, and
- Management feasibility determinations.

In addition, include a section on recommendations for implementation of the proposed project.

Economic Feasibility. Provide information regarding project site; the availability of trained or trainable labor; and the availability of infrastructure, including utilities, and rail, air and road service to the site. Discuss feedstock source management, including feedstock collection, pre-treatment, transportation, and storage, and provide estimates of feedstock volumes and costs. Discuss the proposed project's potential impacts on existing manufacturing plants or other facilities that use similar feedstock if the proposed technology is adopted. Provide projected impacts of the proposed project on resource conservation, public health, and the environment. Provide an overall economic impact of the project including any additional markets created (*e.g.,* for agricultural and forestry products and agricultural waste material) and potential for rural economic development. Provide feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock and biofuel and byproduct dollars from producer associations and cooperatives.

Market Feasibility. Provide information on the sales organization and management. Discuss the nature and extent of market and market area and provide marketing plans for sale of projected output, including both the principle products and the by-products. Discuss the extent of competition including other similar facilities in the market area. Provide projected total supply and projected competitive demand of raw materials. Describe the procurement plan, including projected procurement costs and the form of commitment of raw materials (marketing agreements, *etc.*). Identify commitments from customers or brokers for both the principle products and the by-products. Discuss all risks related to the industry, including industry status.

Technical Feasibility. The technical feasibility report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. The project engineer or architect is considered an independent party provided neither the principals of the firm nor any individual of the firm who participates in the technical feasibility report has a financial interest in the project. If no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function, an individual or firm that is not independent may be used.

Identify any constraints or limitations in the financial projections and any other facility or design-related factors that might affect the success of the enterprise. Identify and estimate project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.

Discuss all risks related to construction of the project and regulation and governmental action as they affect the technical feasibility of the project.

Financial Feasibility. Discuss the reliability of the financial projections and assumptions on which the financial statements are based including all sources of project capital both private and public, such as Federal funds. Provide 3 years (minimum) projected Balance Sheets and Income Statements and cash flow projections for the life of the project. Discuss the ability of the business to achieve the projected income and cash flow. Provide an assessment of the cost accounting system. Discuss the availability of short-term credit or other means to meet seasonable business costs and the adequacy of raw materials and supplies. Provide a sensitivity analysis, including feedstock and energy costs. Discuss all risks related to the project, borrower financing plan, the operational units, and tax issues.

Management Feasibility. Discuss the continuity and adequacy of management. Identify borrower and/or management's previous experience concerning the receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome. Discuss all risks related to the borrower as a company (*e.g.,* borrower is at the Development-Stage) and conflicts of interest, including appearances of conflicts of interest.

Qualifications. Provide a resume or statement of qualifications of the author of

the feasibility study, including prior experience.

Appendix B—Grant Agreement For Renewable Energy System Feasibility Studies

This GRANT AGREEMENT (Agreement) is a contract for receipt of grant funds of $_____, to conduct feasibility studies for renewable energy system projects under the Rural Energy for America Program, Title IX, Section 9001 of the Food, Conservation, and Energy Act of 2008, (P.L. 110–234) between _____ (Grantee) and the United States of America acting through Rural Development, Department of Agriculture (Grantor). All references herein to "project" refer to renewable energy system feasibility study project identified in the work plan submitted with the application. Should actual project costs be lower than projected in the work plan, the final amount of the grant may be adjusted.

(1) Assurance Agreement

Grantee assures Grantor that Grantee is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in the Departmental Regulations as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 and successor regulations to these parts, which are incorporated into this agreement by reference, any Notices relating to this program published in the **Federal Register,** and other applicable statutory provisions.

Grantee and Grantor agree to all of the terms and provisions of any policies and regulations promulgated under Title IX, Section 9001 of the Food, Conservation, and Energy Act of 2008. Any application submitted by the Grantee for this grant, including any attachments or amendments, is incorporated and included as part of this Agreement. Any changes to these documents or this Agreement must be approved in writing by Grantor.

Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement.

(2) Use of Grant Funds

Grantee will use grant funds and leveraged funds only for the purposes and tasks included in the application and budget approved by the Grantor. The approved budget and approved use of funds are as further described in the Grantor Letter of Conditions and amendments or supplements thereto. Any uses not provided for in the approved budget must be approved in writing by Grantor.

(3) Civil Rights Compliance

Grantee will comply with Executive Order 12898, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This shall include collection and maintenance of data on the race, sex, disability, and national origin of Grantee's membership/ownership and employees. These data must be available to Grantor in its conduct of Civil Rights Compliance Reviews, which will be conducted prior to grant closing and 3 years later, unless the final disbursement of grant funds has occurred prior to that date.

(4) Financial Management Systems

A. Grantee will provide a financial management system in accordance with 7 CFR part 3015, including but not limited to:

(1) Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(2) Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and ensure that they are used solely for authorized purposes;

(3) Accounting records prepared in accordance with generally acceptable accounting principles (GAAP) or with principles that are generally required by commercial agriculture lenders and supported by source documentation; and

(4) Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. Grantee will provide verifiable documentation regarding matching funds usage, i.e., bank statements or copies of funding obligations from the matching source.

B. Grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of Grantee which are pertinent to the grant for the purpose of making audits, examinations, excerpts, and transcripts.

(5) Procurement

Grantee will comply with the applicable procurement requirements of 7 CFR part 3015 regarding standards of conduct, open and free competition, access to contractor records, and equal employment opportunity requirements.

(6) Monitoring and Reporting

A. After grant approval through project completion, the Grantee shall:

1. Constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished.

2. Submit semiannual performance reports to Grantor. Each report shall describe current progress and identify any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives or prevent meeting time frame for completion of the feasibility study within two years. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation.

B. Following completion of the feasibility study, Grantee shall submit to the Grantor:

1. the project feasibility study and SF–270, "Request for Advance or Reimbursement," when the feasibility study has been completed; and

2. A final SF–425, "Federal Financial Report," and a final performance report within 90 days of the completion of the feasibility study. When submitting the final SF–425, Grantee must submit sufficient documentation, including invoices, to allow Grantor to verify that the project was completed within the total sums available to it, including the grant and matching funds, in accordance with the work plan and any necessary modifications thereof prepared by Grantee and approved by Grantor; and

C. Beginning the first full year after the feasibility study has been completed, Grantee shall report to Grantor annually for 2 years on the following:

(1) Is the renewable energy system project for which the feasibility study was conducted underway as a result of the feasibility findings? If 'yes,' describe how far along the renewable energy system project is (e.g., financing has been secured, site has been secured, construction contracts are in place, project completed).

(2) If the renewable energy system project is complete, what is the actual amount of energy being produced?

D. *Other reports.* For clarification purposes, the Grantor may request any additional project and/or performance data for the project for which grant funds have been received.

E. *Records access.* Grantee shall allow Grantor access to the records and performance information obtained under the scope of the project including those required to be maintained after project completion.

(7) Fund Disbursement

Grant funds will be expended on a pro rata basis with matching funds.

A. Grantee may submit requests for reimbursement monthly or more frequently if authorized to do so by the Agency. Ordinarily, Grantor will make payment within 30 days after receipt of a proper request for reimbursement.

B. Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

C. Payment shall be made by electronic funds transfer.

D. A SF–270, "Request for Advance or Reimbursement," must be completed by Grantee and submitted to the Agency at the completion of the feasibility study.

E. Grantor will disburse grant funds to Grantee in accordance with the above through 90 percent of grant disbursement. Grantor will hold 10 percent of grant funds until Grantee has submitted a feasibility study acceptable to Grantor.

(8) Use of Remaining Grant Funds

Grant funds not expended within 24 months from date of this agreement will be

cancelled by the Agency. Prior to the actual cancellation, the Agency will notify, in writing, the Grantee of the Agency's intent to cancel the remaining funds.

In witness whereof, Grantee has this day authorized and caused this Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its duly authorized officers thereunto, and Grantor has caused this Agreement to be duly executed in its behalf by:

GRANTEE

_____

Name: _____

Title: _____

GRANTOR

_____

Date _____

United States of America Rural Development

By: _____

Name: _____

Title: _____

Date _____

[FR Doc. 2010–19335 Filed 8–5–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0064]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: Monday, September 13, 2010, from 8 a.m. to 5 p.m., and Tuesday, September 14, 2010, from 8 a.m. to 3 p.m.

ADDRESSES: The Committee meeting will be held at the Crowne Plaza Old Town Alexandria, 901 North Fairfax Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Pamela Stanziani, Designated Federal Official, USDA, AMS, Fruit and Vegetable Programs. *Telephone:* (202) 690–0182. *Facsimile:* (202) 720–0016. *E-mail: Pamela.stanziani@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II), the Secretary of Agriculture established the Committee in August 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The Committee was re-chartered March 31, 2009 with new members appointed December 2009 by USDA from industry nominations.

AMS Deputy Administrator for Fruit and Vegetable Programs, Robert C. Keeney, serves as the Committee's Executive Secretary. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are called upon to participate in the Committee's meetings as determined by the Committee Chairperson. AMS is giving notice of the Committee meeting to the public so that they may attend and present their recommendations. The meeting is open to the public. Reference the date and address section of this announcement for the time and place of the meeting.

Topics of discussion at the advisory committee meeting will include the following: GAP harmonization and audit requirements, food safety updates, local farmer/education initiatives, commodity purchasing programs, and working group reports and recommendations to the full committee.

Those parties that would like to speak at the meeting should register on or before September 1, 2010. To register as a speaker, please e-mail your name, affiliation, business address, e-mail address, and phone number to Ms. Pamela Stanziani at: *Pamela.stanziani@ams.usda.gov* or facsimile to (202) 720–0016. Speakers who have registered in advance will be given priority. Groups and individuals may submit comments for the Committee's consideration to the same e-mail address, or mail to: 1400 Independence Avenue, SW., Room 2085-South, Washington, DC 20250. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting. All presentations must be provided and displayed electronically, and submitted upon designated due date.

If you require special accommodations, such as a sign language interpreter, please use either contact name listed above.

Dated: August 2, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–19366 Filed 8–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to initiate review of proposed forest management projects so that recommendations may be made to the Forest Service on which should be funded through Title II of the Secure Rural Schools and Community Self Determination Act of 2000, as amended in 2008.

DATES: The meeting will be held Thursday, September 9, 2010, 6:30 p.m.

ADDRESSES: The meeting will be held at the Twin Pines Conservation Education Center located on U.S. Highway 60, Rt. 1, Box 1998, Winona, MO. Written comments should be sent to David Whittekiend, Designated Federal Official, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO. Comments may also be sent via e-mail to *dwhittekiend@fs.fed.us* or via facsimile to 573–364–6844.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mark Twain National Forest Supervisors Office, 401 Fairgrounds Road, Rolla, MO. Visitors are encouraged to call ahead to 573–341–7404 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The

following business will be conducted: The meeting will begin to focus on the potential projects that the RAC will be reviewing. Persons who wish to bring related matters to the attention of the Committee may file written statements with David Whittekiend (address above) before or after the meeting.

Dated: August 2, 2010.

David Whittekiend,

Forest Supervisor.

[FR Doc. 2010–19392 Filed 8–5–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Application Deadline Extended; Executive Green ICT & Energy Efficiency Trade Mission to Mexico City, Mexico

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, and U.S. & Foreign Commercial Service are organizing an Executive Green ICT & Energy Efficiency Trade Mission to Mexico City from September 27–29, 2010. This Executive led mission will focus on assisting U.S. providers of "Green Information & Communication Technology (ICT)" solutions, as well as energy efficiency technologies to enter or increase their presence in various sectors of the Mexican market. This will include data centers, telecommunications, utilities, and construction. Green ICTs—or smart technologies—provide monitoring, supervision and automation capabilities to reach energy efficiency in the mentioned industries, such as smart grids and smart buildings. The mission will support U.S. delegates to gain market insight, local private and public contacts, and identify potential business opportunities and partners. In addition to the welcome reception and Matchmaking Services, a one-day Green ICT & Energy Efficiency conference will take place at the World Trade Center in Mexico City. Relevant issues on energy efficiency in data centers, smart grids, and green buildings will be discussed. Mission delegates will have an opportunity to exhibit outside of the conference hall during this event. Furthermore, this mission will take place during the same days as The Green Expo at the World Trade Center in Mexico City. As a separate activity and independent of the mission, delegates will be granted a discount by EJ Krause, organizer of The Green Expo, to exhibit at the show in the USA Pavilion.

DATES: Applications should be submitted to the U.S. Commercial Service in Mexico City by August 13, 2010. Applications received after that date will be considered only if space and scheduling constraints permit.

Contact:

U.S. Commercial Service in Mexico City:

Aliza Totayo, Commercial Officer, T: +52 (55) 5140–2635, *Aliza.Totayo@mail.doc.gov.*

Juan Carlos Prieto, Commercial Specialist, T: +52 (55) 5140–2634, *JuanCarlos.Prieto@mail.doc.gov.*

Timeframe for Recruitment and Applications: Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than August 13, 2010. Applications received after that date will be considered only if space and scheduling constraints permit.

Natalia Susak,

International Trade Specialist.

[FR Doc. 2010–19336 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2010]

Foreign-Trade Zone 202—Los Angeles, CA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to expand FTZ 202 to include a site in Los Angeles, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 30, 2010.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, 7/22/94), and expanded or reorganized on August 26, 1996 (Board Order 842, 61 FR 46763, 9/5/96), on July 9, 1999 (Board Order 1043, 64 FR 38887, 7/20/99), on April 30, 2004 (Board Order 1331, 69 FR 26065, 5/11/04) and on April 24, 2009 (Board Order 1616, 74 FR 21623, 5/8/09).

The zone project currently consists of 15 permanent and temporary sites located at port facilities, industrial parks and warehouse facilities in Los Angeles, San Bernardino, Kern and Riverside Counties as described below:

- *Site 1* (2,783 acres total)—consists of the Port of Los Angeles Harbor Complex in San Pedro;
- *Site 2* (3 acres total)—located at 1 World Way within the Los Angeles International Airport (Parcel 1—1 acre); at 5330 W. 102nd Street, Los Angeles (Parcel 2—1.5 acres); and, at 1111 Watson Center Road, Unit 2–A, B–C, Carson (Parcel 3—22,705 sq. ft.);
- *Site 3* (564 acres)—within the International Trade & Technology Center, Santa Fe Highway at 7th Standard Road, Kern County;
- *Site 4* (353.6 acres)—within the 438-acre Carson Dominguez Technology Center south of the Artesia Freeway, between the Harbor Freeway and I–710 in the City of Carson and the Rancho Dominguez area of Los Angeles County;
- *Site 5* (8.51 acres total, sunset 4/30/2014)—warehouse facilities of 3Plus Logistics located at 20250 South Alameda Street, Rancho Dominguez (6.13 acres) and at 2730 El Presidio Street, Carson (2.38 acres);
- *Site 6* (23 acres)—located at 20002 E. Business Parkway, Walnut;
- *Site 7* (93 acres)—within the 140-acre Pacific Gateway Center, at the southwest corner of the San Diego Freeway Interchange, Los Angeles;
- *Site 9* (22.87 acres total)—located at 19700 Van Ness Avenue, Torrance (Parcel A, 15.61 acres); and at 1451 Knox Street, Torrance (Parcel C, 7.26 acres);
- *Site 10* (325 acres)—Watson Industrial Center South, 22010 South Wilmington Avenue, Carson;
- *Site 11* (153.79 acres)—Watson Corporate Center located at 22010 South Wilmington Avenue and at 2417 East Carson Street, Carson;
- *Site 12* (8 acres, expires 7/31/2011)—Schafer Brothers Distribution Center, Inc., 1981 East 213th Street, Carson;
- *Site 14* (33 acres, expires 7/31/2011)—Nippon Express USA, Inc., located adjacent to Site 1, at 300 Westmont Street, San Pedro;
- *Site 15* (4 acres)—located at 1020 McFarland Avenue, Wilmington;
- *Site 20* (21 acres, expires 7/31/2011)—Kwikset Corporation facilities located within Park Mira Loma West, southeast side of the Intersection of Highway 60 (Pomona Freeway) and Interstate 15 (Ontario Freeway), Mira Loma; and,
- *Temporary Site 2* (2.4 acres, expires 6/30/2011)—a warehouse located at 2200 and 2250 Technology Place, Long Beach.

There is an application currently pending requesting to expand and reorganize FTZ 202 (Doc. 57–2009, 74

FR 67172–67173, 12/18/2009). The proposal includes a request for new authority for expired sites/parcels, to delete an existing site, for permanent status for temporary sites, and to add a new site.

The applicant is now requesting authority to expand the zone to include an additional site in Los Angeles: Proposed Site 25 (665.5 acres)—to include the jet fuel storage and distribution system located at the Los Angeles International Airport as well as related off-site facilities. The proposed site would be as follows: the Los Angeles International Airport jet-fuel storage tanks and delivery system (24 acres), 9900 LAXFUEL Road, Los Angeles; the Kinder Morgan Carson Terminal and pipelines (119.3 acres), 2000 E. Sepulveda Boulevard, Carson; the Exxon-Mobile pipeline (14.1 acres); the Shell Carson Terminal (450 acres), 20945 S. Wilmington Avenue, Carson; Shell pipelines #24 and #26 (9.2 acres); Shell pipeline #6 (22.9 acres); the Vopak Marine Terminal and pipeline (24.6 acres), 2200 E. Pacific Coast Highway, Wilmington; and, the Vopak/Kinder Morgan pipeline (1.4 acres). These facilities consist primarily of storage tanks, pipelines, pumps, valves, filters, meters and related equipment. The system is operated by LAXFUEL Corporation and will be used to provide jet fuel to airlines serving the Los Angeles International Airport. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 5, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 20, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: July 30, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–19463 Filed 8–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–2010]

Foreign-Trade Zone 136—Brevard County, FL; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Canaveral Port Authority, grantee of FTZ 136, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 2, 2010.

FTZ 136 was approved by the Board on March 16, 1987 (Board Order 349, 52 FR 9904, 3/27/1987) and expanded on January 29, 1991 (Board Order 507, 2/5/91).

The current zone project includes the following sites: *Site 1* (476 acres)—Canaveral Port Authority Complex, Port Canaveral, Brevard County; *Site 2* (500 acres)—Titusville-Cocoa Space Center Executive Airport Industrial Park, Titusville; *Site 3* (495 acres)—Melbourne Regional Airport Industrial Park, Melbourne; *Site 4* (24 acres)—Tate Industrial Park at State Road 520, Cocoa; and *Site 5* (5 acres)—718 and 720 North Drive, Melbourne.

The grantee's proposed service area under the ASF would be Brevard County, Florida, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Port Canaveral Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include Sites 1, 2, 3, and 4 of the existing sites as "magnet" sites and existing Site 5 as a "usage-driven" site. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 136's authorized subzones.

In accordance with the Board's regulations, Maureen Hinman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 5, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 20, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: August 2, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–19460 Filed 8–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX98

Marine Mammals; File No. 14352

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Gregory Bossart, Georgia Aquarium, 225

Baker Street, NW, Atlanta, Georgia 30313, has applied for an amendment to Scientific Research Permit No. 14352.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 7, 2010.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14352 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 14352, issued on October 15, 2009, authorizes the permit holder to capture and release bottlenose dolphins (*Tursiops truncatus*) for health assessment purposes in the Indian River Lagoon (IRL), Florida. Captured dolphins receive a complete clinical workup including: measurements, weight, photographs, sample collection, freeze brand, and ultrasound. The holder is requesting the permit be amended to include a second study area in the vicinity of Charleston, South Carolina. Fifty bottlenose dolphins would be captured, sampled, and released annually. Females with calves less than one year old would not be captured. Captured dolphins would receive the same clinical workup as is authorized in the IRL. All captured animals would receive a roto tag. Up to ten animals per year would also receive a VHF tag. An experienced veterinarian would be on site during captures and the dolphins' vital signs would be closely monitored. Processing would take about forty minutes. Individual dolphins would only be sampled once per year. Samples would be analyzed to examine a variety of health topics such as: infectious diseases, immune status, contaminant exposure, antibiotic resistance, and genetics. An additional 400 dolphins per year may be harassed during pre- and post-capture surveys. The objectives of the new study area are the same as the IRL project and having two study areas will allow comparisons between dolphin populations. The amended permit would be valid until October 31, 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 2, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–19469 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX85

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; recovery plan for the fin whale.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the adoption of an Endangered Species Act (ESA) Recovery Plan for the Fin whale (*Balaenoptera physalus*). The Recovery Plan contains revisions and additions in consideration of public comments received on the proposed draft Recovery Plan for the fin whale.

ADDRESSES: Additional information about the Recovery Plans may be obtained by writing to Monica DeAngelis, National Marine Fisheries Service, Southwest Regional Office, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802 or send an electronic message to *Monica.DeAngelis@noaa.gov*.

Electronic copies of the Recovery Plan and a summary of NMFS' response to public comments on the Recovery Plan are available online at the NMFS Office of Protected Resources website: *www.nmfs.noaa.gov/pr/species/mammals/cetaceans/finwhale.htm.*

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis (562) 980–3232, e-mail *Monica.DeAngelis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate (1) objective, measurable criteria that, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species. NMFS' goal is to restore endangered fin whale *(Balaenoptera physalus*) populations to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA.

The fin whale was listed as an endangered species under the ESA on December 2, 1970 (35 FR 18319). Fin whales have a global distribution and can be found in the Atlantic and Pacific Oceans and the Southern Hemisphere. Although most populations were depleted by modern whaling in the mid-twentieth century, there are still tens of thousands of fin whales worldwide. Currently, the population structure of fin whales has not been adequately defined. Most models have assigned arbitrary boundaries, often based on patterns of historic whaling activity and catch reports, rather than on biological evidence. Populations are often divided on an ocean basin level. Since the Southern Ocean often refers only to waters surrounding Antarctica and fin whales occur not only in those waters but also in temperate waters, we refer to the geographic area for the fin whale

subspecies (*Balaena physalus quoyi*) as the Southern Hemisphere. Therefore, the Recovery Plan is organized, for convenience, by ocean basin and discussed in three sections: those fin whales in the North Atlantic Ocean, those in the North Pacific Ocean and its adjoining seas and gulfs, and those in the Southern Hemisphere, referring particularly to areas near Antarctica. There is a need for an improved understanding of the genetic differences among and between populations, in order to determine distinct population units. Although there is new information, existing knowledge of population structure remains poor. New information is currently insufficient to identify units that are both discrete and significant to the survival of the species.

NMFS released the draft Recovery Plan and requested comments from the public on July 6, 2006 (71 FR 38385). A summary of comments and NMFS responses to comments are available electronically (see ADDRESSES). Concurrent with the public comment period, NMFS requested comments from three independent peer-reviewers. The peer-review comment period was extended for another 60 days after the public comment period was closed to allow peer-reviewers more time.

The final Recovery Plan contains: (1) a comprehensive review of fin whale ecology, (2) a threats assessment, (3) biological and recovery criteria for downlisting and delisting, (4) actions necessary for the recovery of the species, (5) an implementation schedule, and (6) estimates of time and cost to recovery.

The Recovery Plan presents a recovery strategy to address the potential threats based on the best available science and presents guidance for use by agencies and interested parties to assist in the recovery of the fin whale. The threats assessment ranked threats as either having a/an Unknown, Unknown but Potentially High, Low, Medium, or High relative impact to the recovery of fin whales. Ranking assignments were determined by an expert panel with contributions from reviewers. Following are the threat rankings relative to the recovery of the fin whale:

- Anthropogenic noise from ship noise, oil and gas exploration, and military sonar and explosives, and competition for resources were ranked as having an unknown impact
- Ship strikes and loss of prey base due to climate and ecosystem change or shifts in habitat were ranked as unknown but potentially high
- Fishery interactions (gillnet, trawl, pot/trap, purse seine, and longline), anthropogenic noise from coastal development, disturbance from whale watching and other vessels, contaminants and pollutants, disease, injury from marine debris, disturbance due to research, and predation and natural mortality were ranked as having a low impact; and
- Direct harvest was ranked as having a medium impact.

No threats were identified as having a high impact relative to the recovery of the fin whale.

The Recovery Plan identifies nine measures that need to be taken to ensure the recovery of fin whales in the North Atlantic, North Pacific, and Southern Hemisphere. Key elements of the proposed recovery program for this species are (1) coordinate state, Federal, and international actions to implement recovery efforts; (2) determine population discreteness and stock structure; (3) develop and apply methods to estimate population size and monitor trends in abundance; (4) conduct risk analyses; (5) identify and protect habitat important to fin whale survival and recovery; (6) identify causes and minimize human-caused injury and mortality; (7) determine and minimize any detrimental effects of anthropogenic noise in the oceans; (8) maximize efforts to acquire scientific information from dead, stranded, and entangled or entrapped fin whales; and (9) develop a post-delisting monitoring plan.

Criteria for the reclassification of the fin whale are included in the final Recovery Plan. In summary, the fin whale may be reclassified from endangered to threatened when all of the following have been met: (1) given current and projected threats and environmental conditions, the overall fin whale population in each ocean basin in which it occurs (North Atlantic, North Pacific, and Southern Hemisphere) satisfies the risk analysis standard for threatened status (has no more than a 1 percent chance of extinction in 100 years) and at least 500 mature, reproductive individuals remain (consisting of at least 250 mature females and at least 250 mature males). Mature is defined as the number of individuals known, estimated or inferred to be capable of reproduction. Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated into a Population Viability Analysis will be carefully considered before downlisting takes place; and (2) none of the known threats to fin whales (summarized in the five listing factors) are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed. The population will be considered for delisting if all of the following can be met: (1) given current and projected threats and environmental conditions, the overall fin whale population in each ocean basin in which it occurs (North Atlantic, North Pacific, and Southern Hemisphere) satisfies the risk analysis standard for unlisted status (has less than a 10 percent probability of becoming endangered (has more than a 1 percent chance of extinction in 100 years) in 20 years). Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated into a Population Viability Analysis will be carefully considered before delisting takes place, and (2) none of the known threats to fin whales (summarized in the five listing factors) are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed.

Time and cost for recovery actions are contained in the Recovery Plan. The recovery program for the fin whale will cost $225.42 million dollars for the first 5 fiscal years and $245.98 million dollars to full recovery, assuming recovery date of 2020 for the North Atlantic and North Pacific Ocean regions and 2030 for the Southern Hemisphere.

In accordance with the 2003 Peer Review Policy as stated in Appendix R of the Interim Endangered and Threatened Species Recovery Planning Guidance, NMFS solicited independent peer-review on the draft Recovery Plan concurrent with the public comment period. Independent peer-reviews were requested from three scientists and managers with expertise in recovery planning, statistical analyses, fisheries, and marine mammals. Many of the recommendations that were made by the reviewers were addressed and provided in detail in the final Recovery Plan. New information, research results, and references that have become available since the draft Recovery Plan was released were also incorporated into the final Recovery Plan.

Conclusion

NMFS revised the final Recovery Plan for the fin whale and evaluated all comments received by the public as well as independent peer-reviewers. NMFS concludes that the Recovery Plan meets the requirements of the ESA.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 2, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–19475 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 100730316–0318–02]

Extension of the Award Period for Certain Minority Business Enterprise Centers

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) publishes this notice of a funded extension of up to nine months, on a non-competitive basis, of the award periods for those Minority Business Enterprise Centers (MBECs) identified in this notice. This action is necessary to allow for continued program delivery by the incumbent MBEC operators while MBDA completes the development of a new minority business development grant program, solicits competitive applications and processes new awards.

DATES: The extension and related funding, if approved, will commence at the end of the current award period and will continue for a period not to exceed nine months.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Gonzalez, Chief, Office of Business Development, Minority Business Development Agency, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Mr. Gonzalez may be reached by telephone at (202) 482–1940 and by e-mail at *egonzalez@mbda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 11625, the MBEC Program provides standardized business assistance and development services directly to eligible minority-owned businesses. The MBEC Program is a key component of MBDA's overall business development assistance program; it promotes the growth and competitiveness of minority business enterprises, and further incorporates an entrepreneurial approach to the delivery of client services. This strategy expands the reach and service delivery of the MBEC Program by requiring project operators to develop and build upon strategic alliances with public and private sector partners as a means of serving eligible businesses within each MBEC's applicable geographical service area.

MBDA amends its prior competitive solicitations under the MBEC Program, as referenced in the below table, to provide funding extensions of up to nine months, on a non-competitive basis, to the award period for the following MBEC projects:

Name of Project	Name of Operator	Geographical Service Area	Original **Federal Register** Notice
Alabama MBEC	Mobile Area Chamber of Commerce, Inc.	State of Alabama	71 FR 42351, as amended by 71 FR 45773 and by 74 FR 58246.
Georgia MBEC	Georgia Tech Research Corporation.	State of Georgia	71 FR 42351, as amended by 74 FR 58246.
Miami MBEC	M. Gill & Associates, Inc	Miami/Ft. Lauderdale/Pompano Beach MSA.	72 FR 67277, as amended by 74 FR 58246.
Mississippi MBEC	Arkansas Regional Minority Business Council.	State of Mississippi	71 FR 42351, as amended by 71 FR 45773 and 74 FR 58246.
North Carolina MBEC	North Carolina Institute of Minority Economic Development.	State of North Carolina	71 FR 42351, as amended by 74 FR 58246.
South Carolina MBEC	DESA, Inc.	State of South Carolina	71 FR 42351, as amended by 74 FR 58246.
Chicago MBEC	Chicago Community Ventures	State of Illinois	71 FR 42351, as amended by 74 FR 58246.
Detroit MBEC	Michigan Minority Business Development Council.	State of Michigan	71 FR 42351, as amended by 71 FR 58788 and by 74 FR 58246.
Indianapolis MBEC	State of Indiana	State of Indiana	71 FR 42351, as amended by 74 FR 58246.
St. Louis MBEC	St. Louis Minority Business Development Council.	State of Missouri	71 FR 42351, as amended by 74 FR 58246.
Dallas MBEC	Grijalva & Allen, P.C	Dallas/Fort Worth/Arlington MSA.	71 FR 42351, as amended by 74 FR 58246.
El Paso MBEC	El Paso Hispanic Chamber of Commerce.	El Paso MSA	72 FR 71621, as amended by 74 FR 58246.
New Mexico MBEC	NEDA Business Consultants, Inc.	State of New Mexico	71 FR 42351, as amended by 74 FR 58246.
San Antonio MBEC	University of Texas at San Antonio.	San Antonio MSA	71 FR 42351, as amended by 74 FR 58246.
Pennsylvania	The Enterprise Center	State of Pennsylvania	71 FR 42351, as amended by 74 FR 58246.
Puerto Rico MBEC	Asociacion Productos de Puerto Rico.	Puerto Rico Islandwide	71 FR 42351, as amended by 74 FR 58246.
Queens MBEC	Jamaica Business Resource Center.	New York Counties of: Queens, Nassau & Suffolk.	71 FR 42351, as amended by 74 FR 58246.
Washington DC Metro MBEC	National Community Reinvestment Coalition, Inc.	Washington, DC/Arlington/Alexandria MSA.	71 FR 42351, as amended by 74 FR 58246.
Williamsburg MBEC	ODA Community Development Corporation.	New York Counties of: Kings & Richmond.	71 FR 42351, as amended by 74 FR 58246.
Arizona MBEC	Arizona Hispanic Chamber of Commerce Foundation.	State of Arizona	71 FR 42351, as amended by 74 FR 58246.
Honolulu MBEC	University of Hawaii	Honolulu MSA	72 FR 67277, as amended by 74 FR 58246.
Inland Empire MBEC	CHARO Community Development Corporation.	California Counties of: Orange, Riverside, Inland Empire, San Diego & San Bernardino.	71 FR 42351, as amended by 74 FR 58246.

Name of Project	Name of Operator	Geographical Service Area	Original **Federal Register** Notice
Los Angeles MBEC	University of Southern California.	California Counties of: Los Angeles & Ventura.	71 FR 42351, as amended by 74 FR 58246.
Nevada MBEC	New Ventures Capital Development Company.	State of Nevada	71 FR 42351, as amended by 74 FR 58246.
Northern California MBEC	Asian, Inc	California Counties of: Santa Clara, Alameda, San Francisco, San Mateo, San Benito, Monterey, Santa Cruz, Sonoma, Napa, Solano, Contra Costa, Mendocino, San Joaquin, Sacramento, & Marin.	71 FR 42351, as amended by 74 FR 58246.
Washington MBEC	Seattle Business Assistance Center.	State of Washington	71 FR 42351, as amended by 74 FR 58246.

Award extensions and their additional funding described herein will be made at the sole discretion of MBDA and the Department of Commerce using the following evaluation criteria: (1) The MBEC's overall program performance rating during the 2009 program year; (2) the availability of appropriated funds; and (3) MBDA's and the Department of Commerce's priorities. MBDA will review each of the MBEC's overall performance ratings as evaluated through the standardized performance reports and assessments required under the MBEC Program to determine which projects will be offered an extension. MBDA will prioritize those MBEC awards meeting the above criteria that also have current award periods scheduled to end on or before January 31, 2010. In addition, although MBDA is allowing the award period for all of the above-referenced MBEC projects to be extended, it is possible that not all projects will be offered an extension and that some or all awards will be extended for less than a nine-month period.

A total of approximately $1.1 million in FY 2010 funds is available under the Consolidated Appropriations Act, 2010, Public Law 111–117, to fund award extensions for the MBEC projects referenced in this notice. MBDA also anticipates that additional appropriated funds will be available in FY 2011 to fund award extensions for those MBEC projects not receiving extensions during FY 2010. In no event will MBDA or the Department of Commerce be responsible for any costs incurred outside of the current award period by the incumbent operators of the MBEC projects affected by this notice if the MBEC Program fails to receive funding, or if an award extension is not made because of other MBDA or Department of Commerce priorities. Publication of this announcement does not oblige MBDA or the Department of Commerce to award any extensions or to obligate any available funds.

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this notice.

Paperwork Reduction Act

This document contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The use of the MBDA Performance Online Database and Standard Forms 424, 424A and 424B has been approved by Office of Management and Budget (OMB) under the control numbers 0640–0002, 4040–0004, 4040–0006 and 4040–0007, respectively. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts. 5 U.S.C. 553(a)(2). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: August 3, 2010.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2010–19486 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828, A–588–846]

Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Brazil and Japan: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On April 1, 2010, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120–day) sunset reviews for both orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;

telephone: (202) 482–5255 and (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2010, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan pursuant to section 751(c) of the Act. *See Initiation of Five–Year (''Sunset'') Review*, 75 FR 16437 (April 1, 2010).

The Department received notices of intent to participate on behalf of United States Steel Corporation, Nucor Corporation, Gallatin Steel, SSAB N.A.D., Steel Dynamics, Inc., and ArcelorMittal USA Inc. (collectively ''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act as producers of the subject merchandise in the United States.

The Department received an adequate substantive response to the notice of initiation from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to either of the orders covered by these sunset reviews. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted expedited (120–day) sunset reviews of the antidumping duty orders on hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan.

Scope of the Orders

The products covered by the antidumping duty orders are certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the orders.

Specifically included in the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of the orders, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: 1) iron predominates, by weight, over each of the other contained elements; 2) the carbon content is 2 percent or less, by weight; and 3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the orders unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of the orders:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10 - 0.14%	0.90% Max	0.025% Max	0.005% Max	0.30 - 0.50%	0.50 - 0.70%	0.20 - 0.40%	0.20% Max

Width = 44.80 inches maximum;
Thickness = 0.063 - 0.198 inches;
Yield Strength = 50,000 ksi minimum;
Tensile Strength = 70,000 - 88,000 psi.

- Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10 - 0.16%	0.70 - 0.90%	0.025% Max	0.006% Max	0.30 - 0.50%	0.50 - 0.70%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

- Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10 - 0.14%	1.30 - 1.80%	0.025% Max	0.005% Max	0.30 - 0.50%	0.50 - 0.70%	0.20 - 0.40%	0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot–rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max ...	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated	0.01 - 0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot–rolled dual phase steel, phase–hardened, primarily with a ferritic–martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot–rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot–rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to the orders is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00.

Certain hot–rolled flat–rolled carbon–quality steel products are covered by the orders, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders on Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Brazil and Japan" from Edward C. Yang, 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 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Commerce Department building.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on hot–rolled flat–rolled carbon–quality steel products from Brazil and Japan would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Producer/Exporter for Brazil	Weighted Average Margin
Companhia Siderurgica Nacional	41.27%
Usinas Siderurgicas de Minas Gerais	43.40%
Companhia Siderurgica Paulista	43.40%
All Others	42.12%

Producer/Exporter for Japan	Weighted Average Margin
Kawasaki Steel Corporation	40.26%
NKK Corporation	17.70%
Nippon Steel Corporation	19.95%
All Others	22.92%

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an

APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: July 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–19454 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. I.D. GF001]

Grants to Manufacturers of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice announcing the availability of grant funds.

SUMMARY: The purpose of this notice is to inform potential applicants that the Department of Commerce is providing financial assistance in calendar year 2010 for U.S. manufacturers of certain worsted wool fabrics. Section 4002(c)(6)(A) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, 118 Stat. 2603) (the "Act") authorizes the Secretary of Commerce to provide grants to persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000, and 2001, manufacturers of two categories of worsted wool fabrics. The first category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters greater than 18.5 micron (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); the total amount of available funds is $2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.11. The second category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters of 18.5 micron or less (HTS heading 9902.51.15, previously HTS heading 9902.51.12); the total amount of available funds is $2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.15. Funding for the worsted wool fabrics grant program will be provided by the Department of the Treasury from amounts in the Wool Apparel Manufacturers Trust Fund (the "Trust Fund"). The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.11 shall be $2,666,000 in calendar year 2010. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.15 shall also be $2,666,000 in calendar year 2010.

DATES: Applications by eligible U.S. producers of certain worsted wool fabrics must be received and validated by Grants.gov, postmarked, or provided to a delivery service on or before 5 p.m. EDT, August 20, 2010. Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Applications received after the closing date and time will be rejected/returned to the sender without further consideration. Use of U.S. mail or another delivery service must be documented with a receipt. No facsimile or electronic mail applications will be accepted.

ADDRESSES: The standard application package is available at *http://www.grants.gov.* For applicants without Internet access, an application package may be received by contacting Mr. Jim Bennett, Office of Textiles and Apparel—Rm. 3100, International Trade Administration, U.S. Department Commerce, Washington, DC 20230, phone (202) 482–4058, e-mail: *James.Bennett@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Technical questions can be directed to Jim Bennett, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058; *James.Bennett@trade.gov.* Grants related administration questions concerning this program should be addressed to Janet Russell, Department of Commerce Grants Officer, (301) 713–0942; *Janet.J.Russell@noaa.gov.* For assistance with using grants.gov, contact *support@grants.gov.*

SUPPLEMENTARY INFORMATION: The items listed below are required before an award can be made. Failure to submit items below by the application date will result in the application not being reviewed. Applicants must have produced in the United States, during calendar years 1999, 2000 and 2001, worsted wool fabrics of a kind described in HTS 9902.51.11 or 9902.51.15. Applicants must provide: (1) Company name, address, contact and phone number; (2) Federal tax identification number; (3) the name and address of each plant or location in the United States where worsted wool fabrics of the kind described in HTS 9902.51.11 or HTS 9902.51.15 was woven by the applicant in 1999, 2000 and 2001; (4) the name and address of each plant or location in the United States where the applicant is weaving worsted wool fabrics of the kind described in HTS 9902.51.11 or HTS 9902.51.15 as of the date of application; (5) the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.15, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001; and (6) the value of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.15, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001.

This data must indicate actual production (not estimates) of worsted wool fabric of the kind described in HTS 9902.51.11 or 9902.51.15. At the conclusion of the application, the applicant must attest that "all information contained in the application is complete and correct and no false claims, statements, or representations have been made." Applicants should be aware that, generally, pursuant to 31 U.S.C. 3729, persons providing a false or fraudulent claims, and, pursuant to 18 U.S.C. 1001, persons making materially false statements or representations, are subject to civil or criminal penalties, respectively. Information that is marked "business confidential" will be protected from disclosure to the full extent permitted by law.

Other Application Requirements: Complete applications must also include the following forms and documents: CD–346, Applicant for Funding Assistance; CD–511, Certification Regarding Lobbying; SF–424, Application for Federal Assistance; and SF–424B, Assurances—Non-Construction Programs.

Electronic Access: The federal funding opportunity announcement for this program can be accessed via the Grants.gov Web site at *http://www.grants.gov.* The announcement will also be available by contacting the program officials identified under the section labeled **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

Statutory Authority: Section 4002(c)(6) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, 118 Stat. 2603) (the "Act"), and amended by Section 1633 of the Pension Protection Act of 2006 (Pub. L. 109–280); Division C, Title 111, Section 325 (b) of the Emergency Economic

Stabilization Act of 2008 (Pub. L. 110–343) extended availability of grant funds through 2014.

Funding Availability: The Secretary of Commerce is authorized under Section 4002(c)(6)(A) of the Act to provide grants to manufacturers of certain worsted wool fabrics. Funding for the worsted wool fabrics grant program will be provided by the Department of the Treasury from amounts in the Wool Apparel Manufacturers Trust Fund. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.11 shall be $2,666,000 in calendar year 2010. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.15 shall also be $2,666,000 in calendar year 2010.

Eligibility Criteria: The worsted wool fabrics grant program is open to persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000 and 2001, manufacturers of worsted wool fabrics in the United States of the kind described in HTS 9902.51.11 or 9902.51.15. Only manufacturers who weave worsted wool fabric in the United States as of the date of application shall be eligible for grant funds. Any manufacturer who becomes a successor-of-interest to a manufacturer of the worsted wool fabrics described in HTS 9902.51.11 or HTS 9902.51.15 during 1999, 2000 or 2001 because of reorganization or otherwise, shall be eligible to apply for such grants.

Cost Sharing Requirements: No cost sharing or matching requirement is required for the worsted wool fabric program.

Evaluation and Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria For Projects: For the worsted wool fabrics grant program, the technical reviewers will use the following criteria to evaluate the applications: (1) Whether the applicant (including persons, firms, corporations, or other legal entities) produced in the United States worsted wool fabrics of the kind described in HTS 9902.51.11 or 9902.51.15 during calendar years 1999, 2000 and 2001; (2) Whether the applicant (including persons, firms, corporations, or other legal entities) is weaving in the United States worsted wool fabric of the kind described in HTS 9902.51.11 or HTS 9902.51.15 as of the date of application; (3) Whether the applicant (including persons, firms, corporations, or other legal entities) was a successor-of-interest to a manufacturer who produced in the United States worsted wool fabric of the kind described in HTS 9902.51.11 or HTS 9902.51.15 during calendar years 1999, 2000 or 2001 because of a reorganization or otherwise; and (4) the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 woven in the United States in each of calendar years 1999, 2000 and 2001; or the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.15 woven in the United States in each of calendar years 1999, 2000 and 2001.

Review and Selection Process: All applications received in response to this announcement will be reviewed to determine whether they are complete and responsive to the content and form of application submission requirements as published in this notice. Responsive applications will be reviewed by an independent, objective panel composed of at least three individuals who are knowledgeable about worsted wool fabric production. The panel will conduct a technical review of applications based on the evaluation criteria listed above. The worsted wool fabrics grant program Selecting Official in the Office of Textiles and Apparel will make the award selection.

Selection Factors for Projects: For each applicant, the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 woven in the United States in each of calendar years 1999, 2000 and 2001; or the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.15 woven in the United States in each of calendar years 1999, 2000 and 2001. The grants are to be allocated among eligible applicants on the basis of the percentage of each manufacturers' production of the fabric described in HTS 9902.51.11 or HTS 9902.51.15, as appropriate, for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify for such grants.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Programs".

Limitation of Liability: In no event will International Trade Administration or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige International Trade Administration to award any specific project or to obligate any available funds.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notices and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: August 3, 2010.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2010–19573 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment; Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on August 25, 2010, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

AGENDA

Open Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Discussion on Proposals from last and for next Wassenaar Meeting.
4. Report on Proposed Changes to the Export Administration Regulation.
5. Other Business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than August 18, 2010.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 8, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 3, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–19473 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Five-year "Sunset" Review of the Antidumping Duty Order

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

SUMMARY: On January 4, 2010, the Department of Commerce ("the Department") published the notice of initiation of the first sunset review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). On the basis of the notice of intent to participate by domestic interested parties and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.218(e)(2)(i). As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Preliminary Results of Review."

EFFECTIVE DATE: August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: 202–482–4047.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2010, the Department published in the **Federal Register** the notice of initiation of its sunset reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, the People's Republic of China, India, Thailand, and Vietnam, in accordance with section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Review*, 75 FR 103 (January 4, 2010) ("*Notice of Initiation*").

The Department received notices of intent to participate from domestic interested parties, the Ad Hoc Shrimp Trade Action Committee ("AHSTAC"), and the American Shrimp Processors Association ("ASPA"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic–like product in the United States.

The Department received substantive responses to the *Notice of Initiation* from domestic interested parties and respondent interested parties (collectively "Vietnamese Respondents") within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On February 12, 2010, ASPA and Vietnamese Respondents filed rebuttal comments to parties' substantive responses.

On March 2, 2010, the Department determined that Vietnamese Respondents accounted for more than 50 percent of exports by volume of the subject merchandise and, therefore, submitted an adequate substantive response to the Department's *Notice of Initiation*. *See* Memorandum to James C. Doyle: Adequacy Determination in Antidumping Duty Sunset Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated March 2, 2010. The Department also determined that domestic interested parties submitted an adequate response as at least one domestic interested party submitted a complete substantive response. See 19 CRF 351.218(e)(1)(i). In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.As explained in the February 12, 2010, memorandum from the Deputy Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of

the Government Closure During the Recent Snowstorm," dated February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. On May 6, 2010, in accordance with section 751(c)(5)(B) of the Act, the Department extended the deadlines for the preliminary and final results of this sunset review by 90 days from the scheduled dates. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Review of Antidumping Duty Order*, 75 FR 24883 (May 6, 2010). The final results in the full sunset review of this antidumping duty order are scheduled on or before November 30, 2010.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell–on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp–based product: 1) that is produced from fresh (or thawed–from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the "Issues and Decision Memorandum for the Preliminary Results of First Sunset Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam" to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated July 30, 2010 ("Decision Memo"), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 of the main Commerce Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the antidumping duty order on certain frozen warmwater shrimp from Vietnam is likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Certain Frozen Warmwater Shrimp from Vietnam

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Bac Lieu Fisheries Joint Stock Company	4.57%
Bim Seafood Joint Stock Company	4.57%
C.P. Vietnam Livestock Corporation	4.57%
Ca Mau Seafood Joint Stock Company ("Seaprimexco Vietname")	4.57%
Cadovimex Seafood Import–Export and Processing Joint Stock Company ("Cadovimex -Vietnam")	4.57%
Cafatex Fishery Joint Stock Corporation ("Cafatex Corporation") aka Camranh Seafoods	4.57%
Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX")	5.24%
Cam Ranh Seafoods Processing Enterprise PTE ("Cam Ranh Seafoods")	4.57%
Coastal Fishery Development Corporation ("Cofidec")	4.57%
Cuulong Seaproducts Company ("Cuulong Seapro")	4.57%

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") (and its affiliate Tho Quang Seafood Processing & Export Company) ..	4.57%
Grobest & I–Mei Industry (Vietnam) Co., Ltd.	4.57%
Investment Commerce Fisheries Corporation ("Incomfish")	4.57%
Minh Hai Export Frozen Seafood Processing Joint Stock Company ("Minh Hai Jostoco")	4.57%
Minh Hai Joint–Stock Seafoods Processing Company ("Seaprodex Minh Hai")	4.30%
Minh Phu Seafood Corp. (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively "Minh Phu Group") ...	4.38%
Ngoc Sinh Private Enterprise	4.57%
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco") ..	4.57%
Nha Trang Seaproduct Company ("Nha Trang Seafoods")	4.57%
Phu Cuong Seafood Processing & Import–Export Co., Ltd.	4.57%
Phuong Nam Co., Ltd. ..	4.57%
Sao Ta Foods Joint Stock Company ("Fimex VN")	4.57%
Soc Trang Seafood Joint Stock Company ("Stapimex")	4.57%
Thuan Phuoc Seafoods and Trading Corporation (and its affiliates Frozen Seafoods Factory No. 32, Seafoods and Foodstuff Factory, and My Son Seafoods Factory)	4.57%
UTXI Aquatic Products Processing Corporation	4.57%
Viet Foods Co., Ltd.	4.57%
Viet Hai Seafood Co., Ltd. aka Viet Nam Fish–One Co., Ltd.	4.57%
Vinh Loi Import Export Company ("VIMEX")	4.57%
Vietnam–Wide Entity	25.76%

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Consistent with 19 CFR 351.309(c)(1)(i), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the time limit for filing the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will be held two days after rebuttal briefs are due, unless the Department alters the date, in accordance with 19 CFR 351.310(d)(1). The Department intends to issue a notice of final results of this first sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than November 30, 2010.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: July 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–19448 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, software, and technologies presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSEA is seeking private-sector members with senior export control expertise and direct experience in one or more of the following industries: Machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals.

To Apply: Please send a short biographical sketch to Ms. Yvette Springer at *Yspringer@bis.doc.gov.* For more information, please contact Ms. Springer on 202–482–2813.

Deadline: This request will be open for 30 days from the date of publication in the **Federal Register**.

Dated: August 2, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–19472 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–428–602

Brass Sheet and Strip from Germany: Notice of Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On April 27, 2010, the U.S. Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on brass sheet and strip from Germany. The review covers one producer/exporter of brass sheet and strip from Germany, Wieland–Werke AG. Based on a withdrawal of the request for review from Wieland–Werke AG, the respondent and German manufacturer of brass sheet and strip, we are now

rescinding this administrative review in full.

DATES: August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5973 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION: On March 1, 2010, the Department published in the **Federal Register** the notice of opportunity to request an administrative review of the antidumping duty order on brass sheet and strip from Germany for the period March 1, 2009, through February 28, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 75 FR 9162 (March 1, 2010). On March 30, 2010, the Department received a request from Wieland–Werke AG, a German producer and exporter, that the Department conduct an administrative review covering brass sheet and strip from Germany. On April 27, 2010, the Department published in the **Federal Register** the notice of initiation of the 2009–2010 administrative review of brass sheet and strip from Germany. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 22107 (April 27, 2010). On June 2, 2010, the Department issued its antidumping duty questionnaire to Wieland–Werke AG. On July 22, 2010, Wieland–Werke AG withdrew its request for an administrative review.

Period of Review

The period of review (POR) is March 1, 2009, through February 28, 2010.

Scope of the Order

The scope of this order covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000; this review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound–on-reels (traverse wound), and cut–to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00 and 7409.29.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Rescission of Antidumping Administrative Review

19 CFR 351.213(d)(1) of the Department's regulations provides 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 of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. Wieland–Werke AG withdrew its request for review within 90 days of April 27, 2010, the date of publication of notice of initiation of the requested review.

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

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 351.305(a)(3). Timely written notification of the return or 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.

We are issuing and publishing this notice 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: August 2, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–19461 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Foreign–Trade Zone 119 - Minneapolis, Minnesota, Site Renumbering Notice

Foreign–Trade Zone 119 was approved by the FTZ Board on July 24, 1985 (Board Order 305, 50 F.R. 3l405, 8/2/85), and expanded on April 14, 1994 (Board Order 690, 59 F.R. 19692, 4/25/94), and on June 4, 2010 (Board Order 1684, 75 F.R. 34097, 6/16/10).

FTZ 119 currently consists of 6 "sites"' totaling 4,624 acres in the Minneapolis area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non–contiguous sites for record–keeping purposes.Under this revision, the site list for FTZ 119 will be as follows: Site 1 (3,002 acres, 500–acre activation limit)--consists of the Minneapolis–St. Paul International Airport; Site 2 (960 acres)--Mid–City Industrial Park; Site 3 (13 acres) located at 3703 Kennebec Drive, Eagan, Minneapolis, within the Eagan Industrial Park; Site 7 (193 acres)--Chaska Bio–Science Corporate Campus, located at the intersection of Carver County Road 10 and New U.S. Highway 212, Chaska (sunset provision - June 30, 2017); Site 8 (200 acres)--Elk Run Bio–Business Park, located on the north side of U.S. Highway 52, approximately 2 miles southeast of the City of Pine Island (sunset provision - June 30, 2017); Site 9 (20 acres)--located at 1700 Wynne Avenue, St. Paul, Minnesota (expires 5/31/2012); and, Site 10 (236 acres)--within the Bloomington Airport Industrial Park.

For further information, contact Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482–0473.

Dated: July 30, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–19453 Filed 8–5–10; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 9/6/2010.

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 4/9/2010 (75 FR 18164–18165) and 6/11/2010 (75 FR 33270–33271), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and 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

Microfiber and Metallic Scrubber Sponges (3-Pack)
NSN: MR 999—Scrubber, Terry
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: MILITARY RESALE–DEFENSE COMMISSARY AGENCY, FORT LEE, VA
COVERAGE: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Candles, Soy
NSN: MR 470—Cucumber Melon
NSN: MR 471—Cucumber Pomegranate
NSN: MR 472—Macintosh Apple
NSN: MR 473—Fresh Linen
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: MILITARY RESALE–DEFENSE COMMISSARY AGENCY, FORT LEE, VA
COVERAGE: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Tape, Pressure Sensitive Adhesive
NSN: 7510–00–266–6694—Flat Back
NSN: 7510–00–266–6709—Crepe Backing
NPA: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: GSA/FEDERAL ACQUISITION SERVICE, NEW YORK, NY
COVERAGE: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Cloth, Dish, Microfiber with Scrubber Mesh, 3-Pack
NSN: MR 963-Blue
NSN: MR 964-Green
NSN: MR 965-Red
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: MILITARY RESALE–DEFENSE COMMISSARY AGENCY, FORT LEE, VA
COVERAGE: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Slicer Aid
NSN: MR 825
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: MILITARY RESALE—DEFENSE COMMISSARY AGENCY, FORT LEE, VA
COVERAGE: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Box, Wood, Ammunition Packing
NSN: 8140–00–NSH–0007
NPA: Knox County Association for Retarded Citizens, Inc., Vincennes, IN
Contracting Activity: DEPARTMENT OF THE NAVY, NAVAL SURFACE WARFARE CENTER, INDIAN HEAD DIVISION, INDIAN HEAD, MD
COVERAGE: C-List for 100% of the requirements of the Naval Surface Warfare Center, Indian Head Division as aggregated by the Naval Surface Warfare Center, Indian Head Division, Indian Head, MD

Caddy, Bucket and Cleaning Kit
NSN: MR 1016
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: MILITARY RESALE–DEFENSE COMMISSARY AGENCY, FORT LEE, VA
COVERAGE: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Kitchen Utensils, Serving
NSN: MR 807—Spoon, Slotted, SS Trim
NSN: MR 808—Spoon, Basting, SS Trim
NSN: MR 809—Turner, Slotted, SS Trim
NSN: MR 810—Skimmer, Kitchen, SS Trim
NSN: MR 811—Fork, Serving, SS Trim
NSN: MR 814—Spatula, Wide, SS Trim
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: MILITARY RESALE–DEFENSE COMMISSARY AGENCY, FORT LEE, VA
COVERAGE: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Type/Location: Custodial Service National Weather Service, 5777 S. Aviation Blvd., N. Charleston, SC
NPA: Goodwill Industries of Lower South Carolina, Inc., North Charleston, SC
Contracting Activity: DEPT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NORFOLK, VA

Service Type/Locations: Administrative Support Service Atlanta VA Medical Center, 1670 Clairmont Road, Decatur, GA; VAMC Health Administrative Service (HAS) Office, 755 Commerce Drive, Decatur, GA
NPA: Bobby Dodd Institute, Inc., Atlanta, GA
Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, VISN 7 CONSOLIDATED CONTRACTING, AUGUSTA, GA

Service Type/Location: Custodial Service Costa Mesa USARC, 2651 Newport Blvd., Costa Mesa, CA
NPA: Elwyn, Inc., Aston, PA
Contracting Activity: DEPT OF THE ARMY, XR W6BB ACA PRESIDIO OF MONTEREY, PRESIDIO OF MONTEREY, CA

Service Type/Locations: Janitorial Service Bldgs 2204, 2212, 2218, 5223 & 8199 2204; 2212; 2218 3rd Street; 5223 Finletter Avenue; 8199 Fairchild Avenue; Elmendorf AFB, AK; Bldgs 736, 658 & 12737 Corner of Quartermaster & D Streets (#736); 5th Street (Kiska Hall) (#658); Vandenburg Avenue (#12737); Fort Richardson, AK
NPA: MQC Enterprises, Inc., Anchorage, AK Contracting Activity: DEPT OF THE ARMY, XR W2SN ENDIST ALASKA, ANCHORAGE, AK

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–19451 Filed 8–5–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions And Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete a service previously provided by such agency.

Comments Must be Received On or Before: 9/6/2010.

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 service 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 service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service 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 service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Stock Title Stamp

NSN: 7520–00–NSH–0129—"Faxed"
NSN: 7520–00–NSH–0130—"Paid"
NSN: 7520–00–NSH–0131—"Void"
NSN: 7520–00–NSH–0132—"For Deposit Only"
NSN: 7520–00–NSH–0133—"File Copy"
NSN: 7520–00–NSH–0134—"E–Mailed"
NSN: 7520–00–NSH–0135—"Mailed"
NSN: 7520–00–NSH–0136—"Revised"
NSN: 7520–00–NSH–0137—"Enclosure"
NSN: 7520–00–NSH–0138—"SBU"
NSN: 7520–00–NSH–0139—"For Official Use Only"
NSN: 7520–00–NSH–0140—"Classified"
NSN: 7520–00–NSH–0141—"MICAP"
NSN: 7520–00–NSH–0142—"For Training Only"
NSN: 7520–00–NSH–0143—"NOFORN"
NSN: 7520–00–NSH–0144—"Secret/ACCM"
NSN: 7520–00–NSH–0145—"USDA"
NSN: 7520–00–NSH–0146—"United States Treasury"
NSN: 7520–00–NSH–0147—"Army Standard"
NPA: Arbor Products, Inc., Houston, TX
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY
COVERAGE: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Jacket, United States Coast Guard Running Suit

NSN: 8415–00–NIB–0783—Size XS
NSN: 8415–00–NIB–0784—Size SM
NSN: 8415–00–NIB–0785—Size MD
NSN: 8415–00–NIB–0786—Size LG
NSN: 8415–00–NIB–0787—Size X–LG
NSN: 8415–00–NIB–0788—Size XX–LG
NPA: San Antonio Lighthouse for the Blind, San Antonio, TX
Contracting Activity: DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD, WASHINGTON, DC
COVERAGE: C-List for 100% of the requirements of the U.S. Coast Guard as aggregated by the U.S. Coast Guard.

Service

Service Type/Location: Grounds Maintenance, Jonathan Wainwright Memorial VAMC, 77 Wainwright Drive, Walla Walla, WA.
NPA: Lillie Rice Center, Walla Walla, WA.
Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, NETWORK BUSINESS OFFICE (10N20VBO), VANCOUVER, WA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide a service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with a service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Mailing Service, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Atlanta, GA.
NPA: Tommy Nobis Enterprises, Inc., Marietta, GA.
Contracting Activity: DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF CONTRACT & GRANTS OPERATIONS, WASHINGTON, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–19452 Filed 8–5–10; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the the National Evaluation of School-Based Learn and Serve America Teacher Recruitment Process 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, Kimberly Spring at (202) 606–6629. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, *Attn:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 11, 2010. This comment period ended July 12, 2010. No public comments were received from this Notice.

Description: The Corporation is seeking approval of the National Evaluation of School-Based Learn and Serve America Teacher Recruitment Process. The information collection will gather data on public school districts, schools, and teachers that will be used to identify and recruit eligible schools and teachers for participation in a national evaluation of the impacts of service-learning on students' academic achievement and academic and civic engagement.

Type of Review: New Information Collection.

Agency: Corporation for National and Community Service.

Title: The National Evaluation of School-Based Learn and Serve America Teacher Recruitment Process.

OMB Number: None.

Agency Number: None.

Affected Public: Public school district administrators, principals, and teachers.

Total Respondents: 989.

Frequency: Once.

Average Time per Response: 1.3 hours.

Estimated Total Burden Hours: 1,320 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 30, 2010.

Kevin Cramer,

Acting Director, Office of Research and Policy Development.

[FR Doc. 2010–19426 Filed 8–5–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2010–HA–0107]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency'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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 5, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, 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 proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: Erika Elvander, 2345 Crystal Drive, Crystal Park 4, Suite 120, Arlington, VA 22202, or call (703) 604–5616.

Title; Associated Form; and OMB Number: Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury Anti-Stigma Survey; OMB Control Number 0720–TBD.

Needs and Uses: The project aims to identify best practices in reducing stigma through information solicited from Anti-Stigma campaigns throughout the United States. Approximately 30 campaigns have been identified to receive a survey. The data/study will fill a gap in the scientific literature and further the Departments information and knowledge base relative to this

important topic. The information collection requirement is necessary to identify effective efforts to reduce patient stigma associated with obtaining mental health treatment.

Affected Public: Not-for-profit institutions.

Annual Burden Hours: 7.5 hours.

Number of Respondents: 30.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

As part of the Federal Partners Anti-Stigma Working Group, we propose a survey research study to determine the most and least effective techniques used to combat stigma related to mental illness. We plan to send letters to anti-stigma groups asking them to take part in an online survey. This survey will query the organizations about their outreach methods and the perceived effectiveness of their methods.

We plan to use the web-based tool Surveymonkey to reduce the cost and burden on the participants and ourselves. The data will be put into a statistical program and analyzed. We will use frequency analysis to see if there are any anti-stigma efforts that are identified as particularly effective or non-effective. Depending on the number of responses, we may use a regression analysis to identify the best predictors of a successful program. We will use statistical power analysis and hypothesis testing to determine the robustness of our results as well as the chance for type I and type II errors. We may also do more ad hoc analysis depending on the number and types of responses.

This study will fill a gap in the scientific literature. A recent search using the PsychInfo database showed no published studies or dissertations that surveyed multiple anti-stigma campaigns in the US seeking to identify best practices for reducing stigma.

We anticipate the risk to participants to be minimal. Responses will be shown in aggregate format only; there will be no personally identifying information published.

Dated: August 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19306 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board

AGENCY: Department of Defense, Defense Policy Board.

ACTION: Notice.

SUMMARY: The Defense Policy Board will meet in closed session on September 13, 2010 from 0730 hrs until 1800 hrs and on June 24, 2010 from 0730 hrs until 1000 hrs at the Pentagon.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 703–571–9232.

Dated: July 26, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–19316 Filed 8–5–10; 8:45 am]

BILLING CODE 5000–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas *Per Diem* Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee; DoD.

ACTION: Notice of revised non-foreign overseas *per diem* rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 269. This bulletin lists revisions in the *per diem* rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 269 is being published in the **Federal Register** to assure that travelers are paid *per diem* at the most current rates.

DATES: Effective August 1, 2010.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in *per diem* rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 268. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in *per diem* rates to agencies and establishments outside the Department of Defense. For more information or questions about *per diem* rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 269 are updated rates for Alaska.

Dated: August 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	100		71		171	1/1/2009
ADAK						
01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	181		97		278	4/1/2007
09/16 - 04/30	99		89		188	4/1/2007
BARROW						
01/01 - 12/31	159		95		254	10/1/2002
BETHEL						
01/01 - 12/31	139		87		226	1/1/2009
BETTLES						
01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER						
10/01 - 04/30	95		81		176	1/1/2009
05/01 - 09/30	125		84		209	1/1/2009
CORDOVA						
01/01 - 12/31	95		77		172	3/1/2010
CRAIG						
10/01 - 03/31	151		76		227	3/1/2010
04/01 - 09/30	236		84		320	3/1/2010
DELTA JUNCTION						
01/01 - 12/31	135		80		215	7/1/2008
DENALI NATIONAL PARK						
06/01 - 08/31	135		80		215	3/1/2010
09/01 - 05/31	90		74		164	3/1/2010

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
DILLINGHAM						
04/15 - 10/15	185		83		268	1/1/2009
10/16 - 04/14	169		82		251	1/1/2009
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		86		207	1/1/2009
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB						
09/16 - 04/30	75		79		154	2/1/2009
05/01 - 09/15	175		88		263	2/1/2009
ELFIN COVE						
01/01 - 12/31	200		45		245	8/1/2010
ELMENDORF AFB						
05/01 - 09/15	181		97		278	4/1/2007
09/16 - 04/30	99		89		188	4/1/2007
FAIRBANKS						
05/01 - 09/15	175		88		263	2/1/2009
09/16 - 04/30	75		79		154	2/1/2009
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/1/2002
FT. GREELY						
01/01 - 12/31	135		80		215	7/1/2008
FT. RICHARDSON						
05/01 - 09/15	181		97		278	4/1/2007
09/16 - 04/30	99		89		188	4/1/2007
FT. WAINWRIGHT						
05/01 - 09/15	175		88		263	2/1/2009
09/16 - 04/30	75		79		154	2/1/2009
GLENNALLEN						
05/01 - 09/30	125		84		209	1/1/2009
10/01 - 04/30	95		81		176	1/1/2009
HAINES						
01/01 - 12/31	109		75		184	1/1/2009
HEALY						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
06/01 - 08/31	135		80		215	3/1/2010
09/01 - 05/31	90		74		164	3/1/2010
HOMER						
09/16 - 05/14	79		78		157	1/1/2009
05/15 - 09/15	167		85		252	1/1/2009
JUNEAU						
05/01 - 09/30	149		85		234	1/1/2009
10/01 - 04/30	109		80		189	1/1/2009
KAKTOVIK						
01/01 - 12/31	165		86		251	10/1/2002
KAVIK CAMP						
01/01 - 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA						
05/01 - 08/31	159		90		249	3/1/2010
09/01 - 04/30	79		82		161	3/1/2010
KENNICOTT						
01/01 - 12/31	259		94		353	1/1/2009
KETCHIKAN						
05/01 - 09/30	140		67		207	3/1/2010
10/01 - 04/30	99		63		162	3/1/2010
KING SALMON						
05/01 - 10/01	225		91		316	10/1/2002
10/02 - 04/30	125		81		206	10/1/2002
KLAWOCK						
04/01 - 09/30	236		84		320	3/1/2010
10/01 - 03/31	151		76		227	3/1/2010
KODIAK						
05/01 - 09/30	141		80		221	3/1/2010
10/01 - 04/30	99		76		175	3/1/2010
KOTZEBUE						
01/01 - 12/31	189		93		282	3/1/2010
KULIS AGS						
05/01 - 09/15	181		97		278	4/1/2007
09/16 - 04/30	99		89		188	4/1/2007

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
MCCARTHY						
01/01 - 12/31	259		94		353	1/1/2009
MCGRATH						
01/01 - 12/31	165		69		234	10/1/2006
MURPHY DOME						
05/01 - 09/15	175		88		263	2/1/2009
09/16 - 04/30	75		79		154	2/1/2009
NOME						
01/01 - 12/31	150		97		247	3/1/2010
NUIQSUT						
01/01 - 12/31	180		53		233	10/1/2002
PETERSBURG						
01/01 - 12/31	100		71		171	7/1/2008
PORT ALEXANDER						
01/01 - 12/31	150		43		193	8/1/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/1/2002
SELDOVIA						
05/15 - 09/15	167		85		252	1/1/2009
09/16 - 05/14	79		78		157	1/1/2009
SEWARD						
05/01 - 09/30	174		89		263	3/1/2010
10/01 - 04/30	99		81		180	3/1/2010
SITKA-MT. EDGECUMBE						
10/01 - 04/30	99		73		172	3/1/2010
05/01 - 09/30	119		75		194	3/1/2010
SKAGWAY						
10/01 - 04/30	99		63		162	3/1/2010
05/01 - 09/30	140		67		207	3/1/2010
SLANA						
05/01 - 09/30	139		55		194	2/1/2005
10/01 - 04/30	99		55		154	2/1/2005
SPRUCE CAPE						
05/01 - 09/30	141		80		221	3/1/2010

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30		99		76		175	3/1/2010
ST. GEORGE							
01/01 - 12/31		129		55		184	6/1/2004
TALKEETNA							
01/01 - 12/31		100		89		189	10/1/2002
TANANA							
01/01 - 12/31		150		97		247	3/1/2010
TOK							
05/01 - 09/30		129		76		205	3/1/2010
10/01 - 04/30		99		73		172	3/1/2010
UMIAT							
01/01 - 12/31		350		35		385	10/1/2006
VALDEZ							
05/01 - 09/30		179		91		270	3/1/2010
10/01 - 04/30		119		85		204	3/1/2010
WASILLA							
05/01 - 09/30		151		89		240	1/1/2009
10/01 - 04/30		96		83		179	1/1/2009
WRANGELL							
10/01 - 04/30		99		63		162	3/1/2010
05/01 - 09/30		140		67		207	3/1/2010
YAKUTAT							
01/01 - 12/31		105		76		181	1/1/2009
AMERICAN SAMOA							
AMERICAN SAMOA							
01/01 - 12/31		139		75		214	8/1/2009
GUAM							
GUAM (INCL ALL MIL INSTAL)							
01/01 - 12/31		159		94		253	7/1/2010
HAWAII							
[OTHER]							
01/01 - 12/31		121		104		225	5/1/2010
CAMP H M SMITH							
01/01 - 12/31		177		106		283	5/1/2008

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		106		283	5/1/2008
FT. DERUSSEY						
01/01 - 12/31	177		106		283	5/1/2008
FT. SHAFTER						
01/01 - 12/31	177		106		283	5/1/2008
HICKAM AFB						
01/01 - 12/31	177		106		283	5/1/2008
HONOLULU						
01/01 - 12/31	177		106		283	5/1/2008
ISLE OF HAWAII: HILO						
01/01 - 12/31	121		104		225	5/1/2010
ISLE OF HAWAII: OTHER						
01/01 - 12/31	180		108		288	5/1/2009
ISLE OF KAUAI						
01/01 - 12/31	198		115		313	5/1/2009
ISLE OF MAUI						
01/01 - 12/31	169		104		273	5/1/2009
ISLE OF OAHU						
01/01 - 12/31	177		106		283	5/1/2008
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	198		115		313	5/1/2009
KILAUEA MILITARY CAMP						
01/01 - 12/31	121		104		225	5/1/2010
LANAI						
01/01 - 12/31	229		124		353	5/1/2009
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		106		283	5/1/2008
MCB HAWAII						
01/01 - 12/31	177		106		283	5/1/2008
MOLOKAI						
01/01 - 12/31	135		91		226	5/1/2010
NAS BARBERS POINT						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	177		106		283	5/1/2008
PEARL HARBOR						
01/01 - 12/31	177		106		283	5/1/2008
SCHOFIELD BARRACKS						
01/01 - 12/31	177		106		283	5/1/2008
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		106		283	5/1/2008
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		49		174	5/1/2010
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	55		72		127	10/1/2002
ROTA						
01/01 - 12/31	129		102		231	7/1/2010
SAIPAN						
01/01 - 12/31	121		98		219	6/1/2007
TINIAN						
01/01 - 12/31	85		71		156	7/1/2010
PUERTO RICO						
[OTHER]						
01/01 - 12/31	62		57		119	10/1/2002
AGUADILLA						
01/01 - 12/31	75		64		139	11/1/2007
BAYAMON						
01/01 - 12/31	195		82		277	10/1/2007
CAROLINA						
01/01 - 12/31	195		82		277	10/1/2007
CEIBA						
05/01 - 11/30	155		57		212	8/1/2006
12/01 - 04/30	185		57		242	8/1/2006
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
12/01 - 04/30	185		57		242	8/1/2006

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 11/30	155		57		212	8/1/2006
FT. BUCHANAN [INCL GSA SVC CTR, GUAY						
01/01 - 12/31	195		82		277	10/1/2007
HUMACAO						
12/01 - 04/30	185		57		242	8/1/2006
05/01 - 11/30	155		57		212	8/1/2006
LUIS MUNOZ MARIN IAP AGS						
01/01 - 12/31	195		82		277	10/1/2007
LUQUILLO						
05/01 - 11/30	155		57		212	8/1/2006
12/01 - 04/30	185		57		242	8/1/2006
MAYAGUEZ						
01/01 - 12/31	109		77		186	11/1/2007
PONCE						
01/01 - 12/31	139		83		222	11/1/2007
SABANA SECA [INCL ALL MILITARY]						
01/01 - 12/31	195		82		277	10/1/2007
SAN JUAN & NAV RES STA						
01/01 - 12/31	195		82		277	10/1/2007
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	5/1/2006
12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN						
04/15 - 12/14	163		98		261	5/1/2006
12/15 - 04/14	220		104		324	5/1/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	5/1/2006
12/15 - 04/14	299		111		410	5/1/2006
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	152		16		168	5/1/2009

[FR Doc. 2010–19279 Filed 8–5–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Financing (OMB Control Number 0704–0359)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through December 31, 2010. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by October 5, 2010

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0359, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0359 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn.: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

○ Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) part 232, Contract Financing, and related clause at DFARS 252.232–7007, Limitation of Government's Obligation; OMB Control Number 0704–0359.

Needs and Uses: This information collection requires contractors that are awarded incrementally funded, fixed-price DoD contracts to notify the Government when the work under the contract will, within 90 days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (*e.g.,* allot additional funds for continued performance, terminate the contract, or terminate certain contract line items).

Affected Public: Businesses or other for-profit and non-profit institutions.

Annual Burden Hours: 800.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements related to contract financing and payment in DFARS part 232, Contract Financing, and the related clause at DFARS 252.232–7007, Limitation of Government's Obligation. DFARS subpart 232.7, Contract Funding, limits the use of incrementally funded fixed-price contracts to situations where (1) the contract is for severable services, does not exceed one year in length, and is incrementally funded using funds available as of the date the funds are obligated; or (2) the contract uses funds available from two or more fiscal years and is funded with research and development appropriations, or Congress has otherwise authorized incremental funding. The clause at DFARS 252.232–7007 identifies procedures for incrementally funding the contract and requires the contractor to provide the Government with written notice when the work will reach the point at which the amount payable by the Government, including any termination costs, approximates 85 percent of the funds currently allotted to the contract.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–19411 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Basing of MV–22 and H–1 Aircraft in Support of III Marine Expeditionary Force Elements in Hawaii

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act, (NEPA), of 1969 (42 United States Code 4332(2)(C)), as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), Department of the Navy (DoN) NEPA regulations (32 CFR Part 775), and United States Marine Corps (USMC) NEPA directives (Marine Corps Order P5090.2A, changes 1 and 2), the DoN intends to prepare an Environmental Impact Statement (EIS) and conduct public scoping meetings for the proposed basing and operation of MV–22 tiltrotor (MV–22) Osprey aircraft and H–1 Cobra and Huey attack helicopters in support of III Marine Expeditionary Force (MEF) training and readiness operations in Hawaii. The EIS will evaluate a proposal to introduce up to two Marine Medium Tiltrotor (VMM) squadrons with a total of 24 MV–22 aircraft and one Marine Light Attack Helicopter (HMLA) squadron composed of 18 AH–1Z and 9 UH–1Y helicopters. Because the proposed squadrons will train on land currently owned or controlled by the Department of the Army (Army), the DoN has requested that the Army be a cooperating agency for the preparation of this EIS.

DATES: See **SUPPLEMENTARY INFORMATION** section for public scoping meeting dates.

ADDRESSES: Written comments on the proposed action and alternatives may be submitted during the 30-day public scoping comment period and should be submitted and postmarked no later than September 7, 2010. There are three ways to submit written comments: (1) Attending one of the public scoping open-houses, (2) Submitting through the project Web site at *http://www.mcbh.usmc.mil/mv22h1eis,* or (3) Via mail. Comments submitted by mail should be sent to Department of the Navy, Naval Facilities Engineering Command, Pacific Division, *Attn:* EV21, MV–22/H–1 EIS Project Manager, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134.

FOR FURTHER INFORMATION CONTACT: Please visit the project Web site or contact the MV–22/H–1 EIS Project Manager by telephone at 808–472–1196 or by e-mail via the project Web site. Please submit requests for special assistance, sign language interpretation for the hearing impaired, or other auxiliary aids needed at the public scoping open house to the Project Manager by August 13, 2010.

SUPPLEMENTARY INFORMATION: The DoN is initiating a public scoping process to identify community concerns and specific issues to be addressed in the EIS. Federal, state, county agencies and

interested parties are invited to attend any of these meetings and are encouraged to provide comments. The DoN will consider these comments in determining the scope of the EIS. Five public scoping meetings, using an informal open-house format, will be held on the following dates and locations in Hawaii:

1. Tuesday, August 24, 2010, 5 p.m. to 8 p.m., Hilo High School Cafeteria, 556 Waianuenue Avenue, Hilo, HI 96720.

2. Wednesday, August 25, 2010, 4 p.m. to 7 p.m., Waikoloa Elementary & Middle School Cafeteria, 68–1730 Hooko Street, Waikoloa, HI 96738.

3. Thursday, August 26, 2010, 5 p.m. to 8 p.m., King Intermediate School Cafeteria, 46–155 Kamehameha Highway, Kaneohe, HI 96744.

4. Saturday, August 28, 2010, 1 p.m. to 4 p.m., Kaunakakai Elementary School Library, Ailoa Street, Kaunakakai, HI 96748.

5. Monday, August 30, 2010, 5 p.m. to 8 p.m., Waimanalo Elementary & Intermediate School Cafeteria, 41–1330 Kalanianaole Highway, Waimanalo, HI 96795.

The scoping sessions will have informational displays available for review. Representatives from the DoN and Army will be present to answer questions, and the public will have an opportunity to submit written comments.

Over the next decade, the Marine Corps plans to restructure and rebase its forces in the Pacific. These initiatives will shape the future of Marine Corps aviation as adjustments are made to meet the diverse missions of today's and tomorrow's battlefields.

The Marine Corps organizes for operations by forming Marine Air-Ground Task Forces (MAGTFs). A MAGTF is a balanced, air-ground combined organization of Marine Corps forces under a single commander and is the Marine Corps' principal organization for all missions across the range of military operations. All MAGTFs are expeditionary, comprising four core elements: A command element (CE), a ground combat element (GCE), an aviation combat element (ACE), and a logistics combat element (LCE).

Marine Expeditionary Forces (MEFs) are the Marine Corps' largest MAGTFs, task-organized around permanent command elements and normally containing one or more Marine divisions, Marine aircraft wings, and Marine logistics groups. There are three standing MEFs across the Marine Corps. I MEF (Camp Pendleton, California) and III MEF (Okinawa, Japan) are assigned under Marine Forces Pacific. II MEF (Camp Lejeune, North Carolina) is assigned under Marine Forces Command.

Although III MEF is headquartered in Okinawa, Japan, a smaller MAGTF that is part of the larger MEF is based at Marine Corps Base (MCB) Hawaii Kaneohe Bay. The Kaneohe Bay elements include a command element (CE), the 3d Regiment (a GCE), Marine Air Group (MAG) 24 (a partial ACE), 1/12 Artillery Battalion, 3rd Radio Battalion, Combat Logistics Battalion 3 (LCE), and 21st Dental Company, among others. The VMM and HMLA squadrons would complete the MAG 24 ACE by providing missing attack and medium lift capability that are currently supplied from other commands, hence the need to base these squadrons in Hawaii.

Proposed Action

The proposed action would include the following:

- Basing and operation of up to two VMM squadrons and one HMLA squadron to service Marine Corps operations in Hawaii.
- Construction of facilities necessary to accommodate and maintain the VMM and HMLA squadrons, including new construction and replacement and/or renovation of taxiways, aprons, hangars, support facilities, and infrastructure such as roadways and utilities.
- Conducting VMM and HMLA training and readiness operations and special exercise operations to attain and maintain proficiency in the employment of the aircraft. These operations may occur at training facilities statewide and may include construction of new landing zones and improvements to existing landing zones at selected training facilities.

Purpose and Need

The purpose of the proposed action is to ensure that the Hawaii MAGTF is capable of supporting the needs of the III MEF operational commander to carry out his Title X responsibilities. To accomplish this, a MAGTF must train as it fights, that is as a single unit combining all of the four elements of a MAGTF. Readiness can only be assured through frequent, integrated training between the command, logistics, ground, and air elements of the MAGTF. Of particular importance is the ability to coordinate air and ground elements. This training, is required to maximize operational effectiveness and teaches aircrews how to combine operations with other Marine or joint air and ground assets. The need for the proposed action is to eliminate the existing disaggregation of the Hawaii MAGTF—and the work-around through gap deployments—to ensure a single deployable fighting unit to support III MEF operations in the western Pacific by correcting the currently incomplete ACE capability within the Hawaii MAGTF.

The purpose and need for the proposed action is to correct existing deficiencies in the Hawaii MAGTF force posture, which by necessity results in only three possibilities: Locate the needed assets in Hawaii (proposed action), move the entire MAGTF to another location, or the no action alternative of continuing to fill the missing capabilities from other sources. As explained above, the MAGTF is comprised of four elements. Three of these four elements are already located in Hawaii with all their attendant personnel and infrastructure. The fourth, the ACE, is partially located in Hawaii. Thus, fully 80% of the MAGTF's capacity is already located in Hawaii. Consequently, due to cost, timing and environmental and socioeconomic impacts, the option of relocating the entire MAGTF out of Hawaii was not considered a reasonable alternative.

A screening process using operational requirements was applied to narrow various Hawaii basing alternatives for the VMM and HMLA squadrons to a range of reasonable, feasible alternatives to be evaluated in the EIS. After applying the selection criteria, it was determined that Marine Corps Base (MCB) Hawaii Kaneohe Bay is the only reasonable site to be brought forward for further study.

Full implementation of the proposed action is planned for the year 2018. Approximately 1,000 active duty personnel, 22 civilian personnel (contractors and government employees), and 1,106 dependents would be associated with the new squadrons. Personnel increases would occur from 2012 through 2018, in phase with delivery of the aircraft.

Preliminary Alternatives

A range of reasonable aviation facility alternatives was developed to meet specific requirements. They vary by development footprints, layouts, and locations for aviation facilities at MCB Hawaii Kaneohe Bay. Under the No Action Alternative, current/baseline operations and support of existing capabilities would continue and new aircraft would not be introduced in order to support mission readiness. All of the alternatives except No Action involve construction of aviation facilities at MCB Hawaii Kaneohe Bay, landing zone improvements at selected

sites such as Marine Corps Training Area Bellows (Bellows) in Waimanalo, and training and readiness operations by the VMM and HMLA squadrons at various training facilities statewide currently used by the Marine Corps. In addition to MCB Hawaii Kaneohe Bay and Bellows, VMM and HMLA squadrons may train at Wheeler Army Airfield, Dillingham Airfield, and various U.S. Army training areas on Oahu; Pohakuloa Training Area on the island of Hawaii; Molokai Training Support Facility and Kalaupapa Airfield on Molokai; and the Pacific Missile Range Facility on Kauai.

Environmental Issues and Resources To Be Examined

After scoping is completed, the EIS analysis will evaluate potential environmental effects associated with each alternative selected for full analysis. Issues to be addressed include, but are not limited to, aircraft noise, cultural resources, traffic, socioeconomics, biological resources, geology and soils, water quality, air quality, safety, hazardous materials and waste, visual resources, and environmental justice.

Agency Consultations

The DoN will undertake appropriate consultations with regulatory entities pursuant to the Endangered Species Act, National Historic Preservation Act, Coastal Zone Management Act, and other applicable laws or regulations. Consultation will include but is not limited to the following federal, state, and local agencies: U.S. Fish and Wildlife Service, National Marine Fisheries Service, State Historic Preservation Office, Advisory Council on Historic Preservation, National Park Service, Native Hawaiian Organizations, Historic Hawaii Foundation, and State of Hawaii Office of Planning.

Schedule

This Notice of Intent initiates a 30-day scoping comment period to identify issues to be addressed in the EIS and reasonable and feasible alternatives to implement the proposed action. The next opportunity for public input to the EIS process occurs with publication of a Notice of Availability (NOA) in the **Federal Register** and local media, announcing release of the Draft EIS and commencement of a 45-day public comment period. A notice will be published in local papers to advertise public meetings for the project during the 45-day comment period. The DoN will consider and respond to all comments received on the Draft EIS when preparing the Final EIS. The DoN intends to issue the Final EIS in late 2011, at which time an NOA will be published in the **Federal Register** and local media. The NOA will initiate a 30-day waiting period, after which the Assistant Secretary of the Navy or Principal Deputy Assistant Secretary of the Navy will issue a Record of Decision.

Dated: July 29, 2010.

D.J. Werner,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–19422 Filed 8–5–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Modernization and Expansion of Townsend Bombing Range in McIntosh County, GA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations [CFR] Parts 1500–1508), Department of the Navy (DoN) NEPA regulations (32 CFR Part 775), and United States Marine Corps (USMC) NEPA directives (Marine Corps Order P5090.2A, changes 1 and 2), the DoN intends to prepare an Environmental Impact Statement (EIS) and conduct public scoping meetings for the modernization and expansion of the Townsend Bombing Range (TBR) located in McIntosh County, Georgia to accommodate the use of inert (with spotting charges) Precision Guided Munitions (PGMs) with their associated larger land requirements. To accomplish this, the USMC proposes to acquire lands in the vicinity of TBR on which to create new target areas to allow for a greater variety of training activities. The TBR is owned by the DoN, and is operated by the Georgia Air National Guard (GA ANG). The DoN will prepare the EIS.

DATES AND ADDRESSES: The DoN is initiating a 30-day public scoping process to identify community interests and local issues to be addressed in the EIS, which starts with the publication of this Notice of Intent. Two public scoping meetings, using an informal open house format, will be held from 4 p.m. to 7 p.m. on the following dates and at the following locations in Georgia:

(1) Tuesday, August 24, 2010, City of Ludowici Meeting Room, City Hall, 469 North Macon Street, Ludowici, GA 31316.

(2) Thursday, August 26, 2010, Haynes Auditorium—Ida Hilton Public Library, 1105 Northway, Darien, GA 31305.

The public is invited to attend these meetings to view project-related displays, speak with USMC representatives, and submit public comment forms. All comments regarding the scope of issues that the USMC should consider during EIS preparation must be received prior to September 7, 2010. Additional information concerning the meetings and the proposed alternatives are available on the EIS website at *http://www.townsendbombingrangeeis.com* and will be announced in local and regional newspapers. Please submit requests for special assistance, sign language interpretation for the hearing impaired, oral comments, or other auxiliary aids needed at the scoping meeting to the EIS Project Manager by August 16, 2010.

Submitting Comments: Federal, state, local agencies and interested parties are encouraged to provide oral and/or written comments regarding the scope of the EIS, reasonable alternatives and/or specific issues or topics of interest to the public. There are four ways by which comments can be submitted: (1) Attending one of the public scoping open-houses; (2) submitting through the project's public website at *http://www.townsendbombingrangeeis.com;* (3) E-mail to *townsendbombingrangeeis@ene.com;* (4) submitting written mailed comments on the scope of the EIS. All written comments should be submitted and/or postmarked no later than September 7, 2010. Comments submitted by mail should be sent to: Townsend EIS, Project Manager, Post Office Box 180458, Tallahassee, FL 32318.

The USMC will consider all comments received during the scoping period. A mailing list has been assembled to facilitate preparation of the EIS. Those on this list will receive notices and documents related to EIS preparation. This list includes local, state, and federal agencies with jurisdiction or other interests in the alternatives. In addition, the mailing list includes adjacent property owners, affected municipalities, and other interested parties such as conservation organizations. Anyone wishing to be added to the mailing list may request to

be added by contacting the EIS project manager at the address provided below.

FOR FURTHER INFORMATION CONTACT: Community Planning and Liaison Office; *Attn:* Ms. Alice Howard, Post Office Box 9103, Building 601, Marine Corps Air Station Beaufort, Beaufort, South Carolina 29904–5001; *phone:* 843–228–7558; *e-mail: townsendbombingrangeeis@ene.com.*

SUPPLEMENTARY INFORMATION: The purpose of the Proposed Action is to provide a modern air-to-ground training range which can accommodate inert (with spotting charges) PGMs for aviation units stationed at MCAS Beaufort through the modernization and expansion of TBR in order to meet current training requirements.

The need for the Proposed Action is to more efficiently meet current training requirements for USMC aviation assets by significantly increasing air-to-ground training capabilities in the Beaufort, South Carolina region. Presently, squadrons from Marine Corps Air Station (MCAS) Beaufort must use West Coast training ranges to satisfy PGM training requirements. Having a range available for this training would result in greater training efficiency. To accomplish the proposed action, the USMC would acquire land adjacent to the existing 5,183-acre TBR and would expand the area of controlled access around the bombing targets. The EIS will consider several land acquisition scenarios and configurations of the range to meet the training requirements.

Preliminary Alternatives: At this time, it is anticipated that the EIS will evaluate five action alternatives and the No Action Alternative. Land acquisition scenarios were developed through the use of modeling software to determine the land area necessary to accommodate the use of inert (with spotting charges) PGMs at TBR in a manner that will accomplish the training requirements while maintaining public safety. The EIS will also consider other feasible land acquisition scenarios that may be identified during scoping or during the preparation of the EIS. The five action alternatives currently identified for analysis in the EIS are as follows:

Alternative 1 proposes the acquisition of approximately 11,948 acres to the northwest and southeast of the TBR boundary along the south side of State Highway 57.

Alternative 2 proposes a combination of the property acquisition under Alternative 1 with an additional 24,880 acres located northeast of TBR and to the north of State Highway 57, totaling approximately 36,828 acres.

Alternative 3 proposes the acquisition of approximately 24,880 acres located northeast of TBR and to the North of State Highway 57.

Alternative 4 proposes a combination of the property acquisition under Alternative 1 with an additional 14,752 acres between TBR and the Altamaha River, totaling approximately 26,700 acres.

Alternative 5 proposes a combination of the property acquisition under Alternative 3 and Alternative 4 totaling approximately 51,580 acres.

The No Action Alternative proposes no land acquisition and no changes to operations at TBR. Aviation units stationed at MCAS Beaufort would continue to deploy to the western United States to undergo inert (with spotting charges) PGM training and meet individual aircrew training requirements.

Environmental Issues and Resources To Be Examined: The EIS will evaluate potential environmental effects associated with each of the alternatives. Issues to be addressed may include, but are not limited to: Safety; land use; recreation; air quality; socioeconomics and environmental justice; water resources; noise; cultural resources; biological resources; forestry resources; and airspace/air traffic. Relevant and reasonable measures that could avoid or mitigate environmental effects also will be analyzed. Additionally, the USMC will undertake any consultations required by the Endangered Species Act, Clean Water Act, National Historic Preservation Act, and any other applicable laws or regulations.

EIS Schedule: This Notice of Intent (NOI) is the first phase of the EIS process and announces the 30-day public comment period and public scoping meetings to identify community concerns and local issues that should be addressed in the EIS. The next phase occurs when a Notice of Availability (NOA) is published in the **Federal Register** and local media to publicly announce the release of the Draft EIS. A 45-day public comment period for the Draft EIS will commence upon publication of the NOA in the **Federal Register**. The USMC will consider and respond to all comments received on the Draft EIS when preparing the Final EIS. The USMC intends to issue the Final EIS no later than Spring 2012, at which time a NOA will be published in the **Federal Register** and local media. A Record of Decision is anticipated in Fall 2012.

Dated: July 29, 2010.

D.J. Werner,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–19421 Filed 8–5–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy. U.S. Patent No. 6,965,509: Poly(3,4-alkylenedioxythiophene)-based capacitors using ionic liquids as supporting electrolytes, Navy Case No. 83733//U.S. Patent No. 7,578,859: Poly(3,4-alkylenedioxythiophene)-based capacitors using ionic liquids as supporting electrolytes, Navy Case No. 97448.

ADDRESSES: Requests for copies of the inventions cited should be directed to Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106 and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Seltzer, PhD, Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 498400D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, *telephone:* 760–939–1074, *fax:* 760–939–1210, *E-mail: michael.seltzer@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.7.

Dated: August 2, 2010.

D.J. Werner,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–19395 Filed 8–5–10; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; Promoting Rigorous Career and Technical Education Programs of Study; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2009 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.051C.

Dates:

Applications Available: August 6, 2010.

Deadline for Notice of Intent to Apply: August 16, 2010.

Deadline for Transmittal of Applications: September 7, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Promoting Rigorous Career and Technical Education Programs of Study program is authorized under section 114(c)(1) of the Carl D. Perkins Career and Technical Education Act of 2006 (Act), 20 U.S.C. 2324(c)(1). Under this section the Secretary is authorized to carry out research, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to the career and technical education (CTE) programs under the Act. Through this program and using a "Programs of Study Design Framework" (Framework), we intend to promote and improve State and local development and implementation of, and to assess the impact of student participation in CTE programs of study (POSs) that link secondary and postsecondary education, combine academic and career and technical education in a structured sequence of courses that progress from broad foundation skills to more occupationally specific courses, offer students the opportunities to earn postsecondary credits for courses taken in high school, and lead to a postsecondary credential, certificate, or degree. The Framework is available on the Department's Perkins Collaborative Resource Network (PCRN) Web site at: *http://cte.ed.gov/nationalinitiatives/rposdesignframework.cfm.*

Priority: This priority is from the notice of final priorities, requirements, and selection criteria published elsewhere in this issue of the **Federal Register**.

Competitive Preference Priority: For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Commitment to the Project

The Assistant Secretary for Vocational and Adult Education establishes a priority for applications that propose to contribute funds from other sources of funds to the total cost of the project. To meet this priority, the applicant must propose a budget that describes how the State will contribute 30 percent of the total cost of the project from other sources. For these purposes, the applicant may use—

(a) State leadership funds awarded under section 111 of the Act and as specified in section 112(a)(1) of the Act;

(b) Non-Federal contributions including in-kind contributions, such as facilities, equipment, supplies, services, and other resources; or

(c) A combination of State leadership funds and non-Federal contributions.

Final Requirements

The Assistant Secretary for Vocational and Adult Education 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.

Selected Program of Study: To be eligible for funding an applicant is required to demonstrate that it has selected for implementation a State-developed or State-approved POS that is built and sustained with all of the following 10 Framework components:

(a) *Legislation and Policies:* State and local legislation, rules and regulations, or administrative policies that promote POS development and implementation;

(b) *Partnerships:* Ongoing relationships among education, business, and other community stakeholders that support POS design, implementation, and maintenance;

(c) *Professional Development:* Sustained, intensive, and focused professional development opportunities for administrators, teachers, and faculty that foster POS design, implementation, and maintenance;

(d) *Accountability and Evaluation Systems:* Accountability and evaluation systems and strategies that gather quantitative and qualitative data on both POS components and student outcomes in order to inform ongoing efforts to develop and implement POSs and to determine their effectiveness;

(e) *College- and Career-Readiness Standards:* POS content standards that define what students are expected to know and be able to do to enter and advance in college, their careers, or both, and that include aligned academic and technical content;

(f) *Course Sequences:* Course sequences within a POS that help students transition to postsecondary education without needing to duplicate classes or enroll in remedial courses.

(g) *Credit Transfer Agreements:* Formal credit transfer agreements among secondary schools and postsecondary institutions;

(h) *Guidance Counseling and Career Advisement:* Systems that provide career counseling and academic advisory services to help students make informed decisions about which POS to pursue;

(i) *Teaching and Learning Strategies:* Innovative and creative instructional approaches that enable teachers to integrate academic and technical instruction and also enable students to apply academic and technical learning in their POS coursework; and

(j) *Technical Skills Assessments:* Existing valid and reliable technical skills assessments that provide ongoing information on the extent to which students are attaining the necessary knowledge and skills for entry into and advancement in postsecondary education and careers in their chosen POS.

Each of these 10 components of the Framework has unique sub-components. The sub-components for each of the 10 Framework components are in paragraph (a)(3) of selection criterion (a), *State capacity to implement a rigorous program of study.* Each State and its participating local educational agencies (LEAs) must use all 10 Framework components, must use each of the sub-components of the 10 Framework components that the State deems relevant to the selected POS, and must explain how it plans to support the selected POS using the relevant sub-components.

Existing Technical Skills Assessments: Applicants must propose a project to implement a State-developed or State-approved POS for which valid and reliable technical skills assessments (either third-party industry-recognized assessments, or State-developed or State-approved technical skills assessments based on industry standards that grant high school or postsecondary credit, or both) have been developed.

Local Implementation: The applicant must propose a project to implement the selected POS in at least three LEAs that contain high schools, in concert with at least one of the LEA's postsecondary partners, *i.e.,* at least one postsecondary institution (either two-year or four-year). If a participating LEA contains more than one high school, the LEA must implement the selected POS in at least

one of its high schools. To the extent feasible, the State must implement the selected POS in at least one urban, one suburban, and one rural community within the State, and where circumstances preclude a State from serving at least one of each of these types of communities, provide an explanation in its application. To be eligible for funding an applicant is required to demonstrate that the LEAs chosen for participation in the POS project have the capacity to have all 10 Framework components in place either at the start of the POS project or no later than the beginning of year 2 of the project. The applicant must include a letter of commitment from each LEA, expressing its interest in participating in the project and its commitment to implement the selected POS as prescribed by the State in years 2 through 4 of the project and to maintain constancy in the implementation of the selected POS. During year 1 of the project, CTE staff from the funded States must provide technical assistance to their participating LEAs in order to strengthen weak Framework components or incorporate missing components, so that all 10 Framework components are in place to support the POS when it is implemented at the LEA level. The participating LEAs must implement the selected POS during years 2 through 4 of the project, beginning at the start of the academic year corresponding to year 2 of the project. The applicant must include a plan that describes how CTE State staff will continue to work closely with the LEAs throughout the project period, and provide technical assistance and support to ensure constancy in the implementation of the selected POS in the participating LEAs.

Applicants in States that have a single LEA must implement the selected POS in at least three high schools, in concert with at least one of the LEA's postsecondary partners, *i.e.,* at least one postsecondary institution (either two-year or four-year). To the extent feasible, the participating three high schools must represent urban, suburban, and rural communities and, where circumstances preclude a State from serving at least one of each of these types of communities in its three participating high schools, the State must provide an explanation in its application. All requirements that apply to LEAs in this notice would apply to the participating high schools and their postsecondary partner(s).

Evaluation: Applicants must propose to conduct an annual evaluation of the project to assess the constancy of the implementation of the selected POS in the participating LEAs and the effectiveness of each of the 10 Framework components. To ensure consistency of implementation across the selected LEAs, CTE staff from the funded States must use a self-assessment instrument based on the 10 Framework components as part of the grant's project evaluation.

Applicants must also use student outcome data to assess the progress of students enrolled in each selected POS. To ensure consistency across the funded States, State staff must attend a POS Evaluation Design meeting in Washington, DC, following their receipt of the grant award, to discuss and possibly refine the grantee self-assessment tools related to the 10 Framework components that are developed by the grantees, and to work with OVAE and with each other to develop a plan for the States' use of student outcome data to assess the progress of students enrolled in each selected POS. This meeting will address evaluation and data collection issues, such as, student definitions; the number of students to be selected and the method of student selection to be followed; strategies for comparing outcomes for students who participate in the POS to other students who do not; the identification of potential comparison groups through the States' longitudinal data systems, including any documented valid and reliable alternative method of collecting individual student employment outcome data; and the timing of reporting. After the meeting, we will include the agreed-upon plan for the State's use of the student outcome data as an addendum to each grantee's cooperative agreement.

In addition to requiring applicants to use student outcome data to assess the progress of students enrolled in each selected POS, the State must collect baseline data on postsecondary students who have not had the benefit of participating in a POS aligned with the 10 Framework components in order to compare the outcomes for those students with the outcomes for students who participate in a POS aligned with the 10 Framework components. The State must also collect and report data annually on the following seven performance measures, which are based on the indicators of performance required under section 113(b) (State Performance Measures) and section 203(e) (Tech Prep Indicators of Performance and Accountability) of the Act:

(a) Secondary school completion. The percentage of secondary students participating in the POS supported by the grant award who earn a high school diploma.

(b) Technical skills attainment. The percentage of secondary students participating in the POS supported by the grant award who attain technical skills.

(c) Earned postsecondary credit during high school. The percentage of secondary students participating in the POS supported by the grant award who earn postsecondary credit.

(d) Enrollment in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in postsecondary education by the fall following high school graduation.

(e) Enrollment in postsecondary education in a field or major related to the secondary POS. The percentage of secondary students participating in the POS supported by the grant award who enroll in a postsecondary education program in a field or major related to the participant's secondary POS.

(f) Need for developmental course work in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in one or more postsecondary education developmental courses.

(g) Postsecondary credential, certificate, or diploma attainment. The percentage of secondary students participating in the POS supported by the grant award who attain an industry-recognized credential, certificate, or associate's degree, within two years following enrollment in postsecondary education.

Capacity of Statewide Longitudinal Data System: Applicants must propose the use of a longitudinal data system that has the capacity to link and share data among systems housing different types of data, in order to collect valid and reliable data on the required performance measures identified in the *Evaluation* requirement. The longitudinal data system must contain, at a minimum, the elements listed below, which elements are consistent with section 6401(e)(2)(D) of the America COMPETES Act (P.L. 110–69):

(a) Statewide unique student identifiers;

(b) Student-level enrollment data;

(c) Student-level course completion (transcript) data;

(d) The ability to match student-level secondary and postsecondary data;

(e) The ability to match student-level data to employment outcome data, using—

(1) Unemployment Insurance (UI) wage records, or

(2) Documented valid and reliable alternative methods such as surveys that have, at a minimum, a 70 percent response rate;

(f) A State data audit plan to verify that the education data are valid and reliable; and

(g) An assurance that the use of data will be consistent with the requirements and protections contained in the Family Educational Rights and Privacy Act (FERPA).

Dissemination: Applicants must propose to implement a dissemination plan for the project. The plan must include the development and maintenance of a project Web page for posting project materials, such as: Materials describing the State's process for approving POSs submitted by local recipients of funds; curricula developed for the selected POS; technical assistance materials provided to the participating LEAs and to other local recipients of funds, if applicable; professional development materials; materials describing evaluation results, including performance data on the required performance measures based on the indicators of performance; and other materials containing practical information that would be useful to other States in their efforts to implement and evaluate POSs. Applicants must also participate in POS activities sponsored by the Department, such as annual POS grantee meetings in which grantees describe the progress of their projects and discuss common issues, strategies, and models of best practices; OVAE/POS grantee presentations at the States' Annual National Career Clusters Institutes; OVAE/POS grantee presentations at annual NASDCTEc meetings; and presentations at OVAE-sponsored data quality meetings.

Cooperative Agreement: We plan to make each award to grantees under this program under the terms of a cooperative agreement. We expect to work closely with the funded States to maintain substantial involvement in project implementation, and to provide oversight on project activities by working collaboratively to develop a plan for the use of student outcome data, reviewing and approving project activities, reviewing and approving one stage of work before the grantee can begin a subsequent stage during the project period, and halting an activity if it is not consistent with the program requirements.

Program Authority: 20 U.S.C. 2324(c)(1).

Applicable Regulations: (a) The Education Department General Administrative Regulation (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priorities, requirements, and selection criteria published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $1,500,000 is available from the FY 2009 appropriation for the first 12 months of this project period. Funding for years 2 through 4 is subject to the availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

Estimated Range of Awards: $240,000 to $260,000 for the first 12 months.

Estimated Average Size of Awards: $250,000 for a single budget period of 12 months.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* State boards designated or created consistent with State law as the sole State agencies responsible for the administration of CTE in their States or for the supervision of the administration of CTE in their States, in accordance with the definition of the term "eligible agency" in section 3(12) of the Act.

2. *Cost Sharing or Matching:* This competition does not require sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Laura Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., room 11028, Potomac Center Plaza, Washington, DC 20202–7241. *Telephone:* (202) 245–7840 or by *e-mail: laura.messenger@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 alternative format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to develop an efficient process for reviewing grant applications if it has information regarding the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail should include only the applicant's intent to submit an application; it does not need to include information regarding the content of the proposed application. This e-mail notification should be sent no later than August 16, 2010 to Laura Messenger at: *laura.messenger@ed.gov.* You must include "POS Application" in the subject line of your electronic message. We will consider an application submitted by the deadline date for transmittal of applications even if the applicant did not provide notice of its intent to apply.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins on 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 12 point or larger or no smaller than 10 pitch (charters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, 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 [Part III].

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: August 6, 2010.

Deadline for Notice of Intent to Apply: August 16, 2010.

Deadline for Transmittal of Applications: September 7, 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, 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 competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

Applications under the Promoting Rigorous Career and Technical Education Programs of Study program, CFDA Number 84.051C, 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, the Financial Education for College Access and Success Budget Spreadsheet(s), 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: Laura Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., PCP, Room 11028, Washington, DC 20006–8524. *Fax:* (202) 245–7170.

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 submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.051C), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.051C), 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 4:30:00 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 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

The selection criteria for this competition are from the notice of final priority, definitions, and selection criteria published elsewhere in this issue of the **Federal Register** and are as follows. The maximum score for the selection criteria in this competition is 140 points. Applications that meet the competitive preference priority will receive an additional 10 points.

(a) *State capacity to implement a rigorous program of study (50 points):* In determining the applicant's capacity to implement a rigorous POS, we review each application to determine the extent to which:

(1) The applicant proposes to build on existing State initiatives and partnerships in implementing the proposed project.

(2) The applicant selects a POS that will provide training leading to high-growth, high-demand, or high-wage occupations as determined through analysis of the national, State, or local labor market.

(3) The applicant provides evidence that it has selected a State-developed or State-approved POS that is built and sustained with the 10 Framework components identified in paragraphs (i) through (x); that it has identified which of the sub-components from among those listed under each Framework component are relevant to the selected POS; and that it plans to use those relevant sub-components in its POS and explains how it proposes to do so.

(i) State and local legislation, rules and regulations, or administrative policies that promote POS development and implementation, such as—

(A) The allocation of State or local funding (and other non-Federal resources) designed to promote POS development and long-term sustainability;

(B) The use of established, formal procedures for the design, implementation, and continuous improvement of POSs;

(C) Adherence to policies that ensure opportunities for any interested secondary student to participate in a POS; and

(D) The use of individual graduation or career plans for participating students.

(ii) Ongoing relationships among education, business, and other community stakeholders that support POS design, implementation, and maintenance, such as by—

(A) Using written memoranda that specify the roles and responsibilities of partnership members;

(B) Conducting ongoing analyses of economic and workforce trends to identify POSs that should be created, expanded, or, if appropriate, discontinued;

(C) Linking POS development to existing initiatives that promote workforce and economic development; and

(D) Identifying, validating, and updating technical and workforce readiness skills to be taught within POSs.

(iii) Sustained, intensive, and focused professional development opportunities for administrators, teachers, and faculty that foster POS design, implementation, and maintenance, and that—

(A) Support the alignment of academic and technical curriculum within the POS from grade to grade (within grades 9 through 12) and from secondary to postsecondary education;

(B) Support the development of integrated academic and CTE curriculum and instruction within the POS;

(C) Ensure that teachers and faculty have the necessary content knowledge to align and integrate curriculum and instruction within the POS;

(D) Foster innovative teaching and learning strategies within the POS; and

(E) Assist administrators, teachers, and faculty to use assessment data for POS program and instructional improvement.

(iv) Accountability and evaluation systems and strategies that gather quantitative and qualitative data on all 10 Framework components as well as on student outcomes to inform ongoing efforts to develop and implement POSs and to determine their effectiveness, and that—

(A) Yield valid and reliable data on key student outcomes (indicators of performance) referenced in the Act and other relevant Federal and State legislation; and

(B) Provide timely data to inform ongoing efforts to develop, implement, evaluate, and improve the effectiveness of POSs.

(v) POS content standards that define what students are expected to know and be able to do to enter and advance in college, their careers, or both, and that include aligned academic and technical content, and that—

(A) Are developed and continually validated in collaboration with secondary, postsecondary, and industry partners;

(B) Incorporate essential knowledge and skills that students must master regardless of their chosen career area or POS;

(C) Provide the same rigorous knowledge and skills in reading or language arts and in mathematics that employers and colleges expect of high school graduates; and

(D) To the extent practicable, are internationally benchmarked so that students are prepared to succeed in a global economy.

(vi) Course sequences within a POS that help students transition to postsecondary education without the need to duplicate classes or enroll in remedial courses, as evidenced by—

(A) Course sequence plans that map out recommended academic and career and technical courses for the POS;

(B) Course sequence plans that begin with introductory courses that provide broad foundational knowledge and skills common across all POSs and then progress to more occupationally specific courses that provide the knowledge and skills required for entry into and advancement in the selected POS; and

(C) Opportunities for students to earn postsecondary credit for coursework taken during high school.

(vii) Formal credit transfer agreements among secondary schools and postsecondary institutions that—

(A) Provide a systematic, seamless process for students to earn college credit for postsecondary courses taken in high school, transfer high school credit to any two- or four-year institution in the State that offers the POS, and transfer credit earned at a two-year college to any other two- or four-year institution in the State that offers the POS;

(B) Record college credit earned by high school students on their high school transcripts at the time the credit is earned so that they can transfer seamlessly into the college portion of the POS without the need for additional paperwork or petitioning for credit; and

(C) Describe the expectations and requirements for teacher and faculty qualifications, course prerequisites, postsecondary entry requirements, locations of courses, tuition reimbursement, and the credit transfer process.

(viii) Systems that provide career counseling and academic advisory services to help students make informed decisions about which POS to pursue and that—

(A) Are based on State or local guidance and counseling standards, such as the National Career Development Guidelines;

(B) Ensure that guidance counselors and academic advisors have access to up-to-date information about POS offerings to aid students in their decision-making;

(C) Offer information and tools to help students learn about postsecondary education and career options, including about the prerequisites for particular POSs;

(D) Provide resources for students to identify career interests and aptitudes and to select an appropriate POS;

(E) Provide information and resources for parents, including workshops on college and financial aid applications, on helping their children prepare for college and careers; and

(F) Provide Web-based resources and tools for obtaining student financial assistance.

(ix) Innovative and creative instructional approaches that enable teachers to integrate academic and technical instruction and also enable students to apply academic and technical learning in their POS coursework, as evidenced by—

(A) Interdisciplinary teaching teams of academic and career and technical secondary teachers or postsecondary faculty;

(B) The use of contextualized work-based, project-based, and problem-based learning approaches; and

(C) The use of teaching strategies that foster team-building, critical thinking, problem-solving, and communication skills.

(x) Existing valid and reliable technical skills assessments that provide ongoing information on the extent to which students are attaining the necessary knowledge and skills for entry into and advancement in postsecondary education and careers in their chosen POS and that—

(A) Are either third-party assessments recognized by industry or are technical skills assessments developed or approved by the State that are based on industry standards;

(B) Measure student attainment of technical skill proficiencies at multiple points during a POS;

(C) Incorporate, to the greatest extent possible, performance-based assessment items through which students must demonstrate the application of their knowledge and skills; and

(D) Result in the awarding of secondary credit, postsecondary credit, or special designation on a student's high school diploma.

(b) *Capacity of statewide longitudinal data system (30 points):* In determining the State's capacity to collect longitudinal data on a variety of secondary, postsecondary, and employment outcomes for individual students in order to assess the progress of students enrolled in the selected POS, we review each application to determine the extent to which:

(1) The State's longitudinal data system contains, at a minimum, the following elements—

(i) Statewide unique student identifiers;

(ii) Student-level enrollment data;

(iii) Student-level course completion (transcript) data;

(iv) The ability to match student-level secondary and postsecondary data;

(v) The ability to match student-level data with employment outcome data, using—

(A) Unemployment Insurance (UI) wage records; or

(B) Documented valid and reliable alternative methods such as surveys that have, at a minimum, a 70 percent response rate; and

(vi) A State data audit plan to verify that the education data are valid and reliable.

(2) The applicant provides evidence that project staff will be able to work cooperatively with State data specialists and to access the student outcome data needed to meet annual evaluation and reporting requirements for the POS project.

(c) *Local implementation plan (20 points):* In determining the quality of the plan for local implementation of the selected POS, we review each application to determine the extent to which—

(1) The applicant identifies each of the LEAs it has selected for local implementation of the POS and provides evidence of each LEA's capacity to implement the selected POS and the 10 Framework components, either at the start of the POS project or no later than the beginning of year 2 of the project, as well as the estimated number of students who would participate in the POS in years 2 through 4 of the project, by grade level;

(2) To the extent feasible, the participating LEAs represent urban, suburban, and rural communities, and where circumstances preclude a State from serving at least one of each of these types of communities, the State has provided an explanation in its application;

(3) For participating LEAs prepared to incorporate all 10 elements of the Framework in years 2 through 4 of the project, the applicant includes a letter of commitment from each LEA, expressing its interest in participating in the project and its commitment to implementing the selected POS as prescribed by the State in years 2 through 4 of the project and to maintain constancy in the implementation of the selected POS;

(4) For participating LEAs that do not have all 10 Framework components in place at the start of the project, the applicant outlines the specific actions it will take to ensure that weak or missing Framework components are strengthened or created so that all 10 Framework components are in place at those LEAs and the LEAs are ready to implement the POS by the beginning of the academic year corresponding to year 2 of the project;

(5) The applicant outlines a plan to provide ongoing oversight and technical assistance to the participating LEAs throughout the project period, to ensure constancy in the implementation of the selected POS across the participating LEAs; and

(6) An applicant in a State that has a single LEA outlines a plan—

(i) To implement the selected POS in at least three high schools, in concert with at least one of the LEA's postsecondary partners, *i.e.,* at least one postsecondary institution (either two-year or four-year); and

(ii) To the extent feasible, the participating three high schools represent urban, suburban, and rural communities and, where circumstances preclude a State from serving at least one of each of these types of communities in its three participating high schools, the State has provided an explanation in its application.

(d) *Project management (16 points).* In determining the quality of the management plan for the proposed project, we review each application to determine the extent to which—

(1) The management plan incorporates, at a minimum, each of the requirements included in this notice and identifies specific and measurable objectives and tasks to be undertaken to accomplish each project activity;

(2) The management plan assigns responsibility for the accomplishment of project tasks to specific partners or project personnel and provides timelines that will result in the timely completion of all required project activities within each phase of the project;

(3) The Project Director and other key personnel clearly have the professional qualifications and experience necessary to implement their assigned project tasks; and

(4) The time commitments of the Project Director, key personnel, and partners are appropriate to the tasks assigned.

(e) *Adequacy of resources (10 points).* In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support to be provided (*i.e.,* facilities, equipment, supplies, or other resources) by participating agencies and institutions at the State and local levels.

(2) Whether the budget is appropriate and the costs are reasonable in relation to the objectives and design of the proposed project.

(f) *Evaluation (14 points):* In determining the quality of the proposed project evaluation, we review each application to determine the extent to which—

(1) The proposed project evaluation is feasible and appropriate for evaluating the constancy of the implementation of the selected POS by the participating LEAs in years 2 through 4 of the project;

(2) The proposed evaluation is feasible and appropriate for evaluating the effectiveness of each of the 10 Framework components in each LEA;

(3) The proposed evaluation will be conducted by individuals or entities that possess the necessary background and expertise in project evaluation; and

(4) The applicant expresses its commitment to participate in the Department's Evaluation Design Meeting and has included suggestions regarding the use of student outcome data that it would be able to access through the State's longitudinal data system, including any documented valid and reliable alternative methods for collecting individual student employment outcome data, to assess the progress of students enrolled in the POS.

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 Notice (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 the approved application as part of your binding commitments under the grant.

3. *Reporting.* (a) 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.*

(b) In addition, grantees under this competition must submit an interim report six months after the grant is awarded.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, Federal departments and agencies must clearly describe the goals and objectives of programs, identify resources and actions needed to accomplish goals and objectives, develop a means of measuring progress made, and regularly report on achievement. In determining the overall effectiveness of projects funded under this competition, grantees must be prepared to measure and report on the following measures of effectiveness, which are based on the indicators of performance required under section 113(b) (State Performance Measures) and section 203(e) (Tech Prep Indicators of performance and Accountability) of the Act:

(a) Secondary school completion. The percentage of secondary students participating in the POS supported by the grant award who earn a high school diploma.

(b) Technical skills attainment. The percentage of secondary students participating in the POS supported by the grant award who attain technical skills.

(c) Earned postsecondary credit during high school. The percentage of secondary students participating in the POS supported by the grant award who earn postsecondary credit.

(d) Enrollment in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in postsecondary education by the fall following high school graduation.

(e) Enrollment in postsecondary education in a field or major related to the secondary POS. The percentage of secondary students participating in the POS supported by the grant award who enroll in a postsecondary education program in a field or major related to the participant's secondary POS.

(f) Need for developmental course work in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in one or more postsecondary education developmental courses.

(g) Postsecondary credential, certificate, or diploma attainment. The percentage of secondary students participating in the POS supported by the grant award who attain an industry-recognized credential, certificate, or associate's degree, within two years following enrollment in postsecondary education.

VII. Agency Contact

For Further Information Contact: Laura Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11028, Potomac Center Plaza, Washington, DC 20202–7241. *Telephone:* (202) 245–7772, or by *e-mail: laura.messenger@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 alternative 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: August 3, 2010.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2010–19485 Filed 8–5–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Career and Technical Education Program—Promoting Rigorous Career and Technical Education Programs of Study

Catalog of Federal Domestic Assistance (CFDA) Number: 84.051C.

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final priority, requirements, and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces a final priority, requirements, and selection criteria for the Promoting Rigorous Career and Technical Education Programs of Study program. The Assistant Secretary may use this priority and these requirements and selection criteria for a competition using fiscal year (FY) 2009 funds and competitions in later years. We take this action to promote and improve State and local development and implementation of rigorous career and technical education (CTE) programs of study (POSs).

DATES: *Effective Date:* This priority and these requirements and selection criteria are effective September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Laura Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., room 11028, Potomac Center Plaza, Washington, DC 20202–7241. Telephone: 202–245–7840 or by e-mail: *laura.messenger@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 Promoting Rigorous Career and Technical Education Programs of Study program is authorized under section 114(c)(1) of the Carl D. Perkins Career and Technical Education Act of 2006 (the Act). Under this section, the Secretary is authorized to carry out research, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to CTE programs under the Act. The purpose of this program is to use 10 key components based on the "Program of Study Design Framework"

(Framework) [1] to promote and improve State and local development and implementation of CTE POSs that link secondary and postsecondary education, combine academic and career and technical education in a structured sequence of courses that progress from broad foundational skills to occupationally specific courses (e.g., the States' Career Clusters [2]), and offer students the opportunities to earn postsecondary credits for courses taken in high school that lead to a postsecondary credential, certificate, or degree.

Program Authority: 20 U.S.C. 2324(c)(1).

On May 27, 2010, we published a notice of proposed priorities, requirements, and selection criteria (NPP) for this program in the **Federal Register** (75 FR 29732). That notice contained background information and our reasons for proposing the particular priority, requirements, and selection criteria for this program.

There are differences between the NPP and this notice of final priority, requirements, and selection criteria (NFP) as discussed in the *Analysis of Comments and Changes* section elsewhere in this notice.

Public Comment: In response to our invitation in the May 27, 2010 NPP, 9 parties submitted comments.

Generally, we do not address technical, editorial, and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority, requirements, or selection criteria.

Analysis of Comments and Changes: An analysis of the comments and of any changes we have made to the priority, requirements, or selection criteria since publication of the NPP follows.

Comment: One commenter recommended that language be added to the selection criteria regarding professional development for teachers and administrators on the use of assessment data for POS program and instructional improvement.

Discussion: We agree with the commenter and are revising the selection criteria accordingly. The use of valid and reliable technical skills assessments is one of the 10 Framework components required of funded POSs. Because the purpose of such assessments is to provide ongoing information on the extent to which students are attaining necessary knowledge and skills, we agree that administrators, teachers, and faculty would benefit from professional development on how to use assessment data for POS instructional and program improvement.

Changes: We have revised selection criterion (a), *State capacity to implement a rigorous program of study,* by adding an additional sub-criterion as paragraph (a)(3)(iii)(E) to clarify that applications will be evaluated, in part, based on the extent to which they propose professional development that will assist administrators, teachers, and faculty to use assessment data for POS program and instructional improvement.

Comment: Several commenters stated that the secondary education component of a rigorous program of study should not be limited to providing only introductory, foundation level CTE courses and recommended that the POS secondary component also include programs that provide more occupationally specific content courses. Similarly, one commenter recommended that the State, in its approval or development of POSs, be allowed to determine the educational level at which occupational content is taught.

Discussion: We agree with the commenters that additional flexibility is needed. While we believe it is important that POS course sequences progress from broad foundational knowledge and skills to more occupationally specific courses, it was not our intent to exclude effective POSs that, in addition to providing introductory, foundation courses at the secondary education level, may also provide occupationally specific courses at that level.

Changes: We have revised the language in selection criterion (a), *State capacity to implement a rigorous program of study,* in paragraph (a)(3)(vi)(B) by removing references to the secondary and postsecondary levels in order to clarify that as part of a State's POS, introductory, foundation courses as well as occupationally specific courses may be provided at the secondary level.

Comment: One commenter asked the Department to clarify whether States would be required to implement all 10 Framework components in order to qualify for a grant or if the goal of this program would be to provide an incentive for States to move toward adoption and implementation of the Framework.

Discussion: We agree that the requirement to implement all 10 Framework components needed to be clarified and have added language under the *Selected program of study* requirement to indicate that States must implement all 10 Framework components in order to qualify for a grant under this program.

Changes: We have revised the *Selected Program of Study* requirement to clarify that, to be eligible for funding under this program, an applicant must demonstrate that it has selected for implementation a POS that is built and sustained with all of the 10 Framework components.

Comment: One commenter recommended that, rather than requiring participating local education agencies (LEAs) to have all 10 Framework components in place by the beginning of year 2 of the project, participating LEAs only be required to have 8 of the 10 Framework components in place by the beginning of year 2 of the project and all 10 Framework components in place by the end of year 2.

Discussion: Under the *Local Implementation* requirement, the LEAs chosen for participation in the POS project must have the capacity to have all 10 Framework components in place either at the start of the POS project or no later than the beginning of year 2 of the project. This requirement is necessary because States receiving grant awards under this program are required to evaluate local implementation of their selected POSs and the effectiveness of each of the 10 Framework components, either at the start of the POS project or no later than beginning in year 2 of the project. We cannot extend the timetable for States because the design and implementation of the participating LEAs' POSs must be consistent with the 10 Framework components and we need three full years of data to assess the impact on students of participation in the POS. We will provide ongoing technical assistance throughout the project to ensure the rigor of all funded POSs and consistency in their design and implementation at the local level in order to collect three years of valid and reliable data on the effectiveness of POSs using the 10 Framework components.

Changes: To clarify the timetable for implementation of the 10 Framework components, we have added language to the *Local Implementation* requirement and to selection criterion (c), *Local implementation plan,* to reflect that the participating LEAs must have the capacity to implement the selected POS

[1] The Framework is available on the Department's Perkins Collaborative Resource Network (PCRN) Web site at: *http://cte.ed.gov/nationalinitiatives/rposdesignframework.cfm.*

[2] Information regarding the Career Clusters may be accessed at the following Web site: *http://www.careerclusters.org/index.php.*

and the 10 Framework components, either at the start of the POS project or no later than the beginning of year 2 of the project.

Comment: Several commenters expressed concern that only a very small number of States currently have longitudinal data systems with the capacity to link and share data among education and employment systems. Some commenters stated that State longitudinal data systems are in relatively early stages of development and that several States face barriers regarding the collection of employment data based on a system requiring Social Security Numbers or some other unique student identifiers. One commenter recommended that we allow States to use alternative data collection methods that are capable of yielding the necessary data. Another commenter questioned whether the use of a longitudinal data system should be an eligibility requirement for the program, as the data collection period for the program may not be long enough to follow students through a full POS experience into employment for a sufficient period of time to allow a demonstration of impact. The commenter also cautioned that the POS concept should not be interpreted as a failure based on the lack of data, and/or misinterpretation or misrepresentation of data.

Discussion: We agree that a lack of data should not be interpreted as failure of the POS concept, which is why States receiving grant awards under this program must have valid and reliable means of collecting data on a variety of outcomes for participating students. However, as we stated in the NPP, we expect the primary focus of this program to be on the evaluation of the impact of participation in a POS on enrolled students. As we also noted in the NPP, we recognize that States are at different stages in developing the capacity to link and share necessary information among data systems and we recognize that the development of statewide longitudinal data systems is a complex and costly process. To address our need for valid and reliable data while recognizing the States' need for flexibility in demonstrating how they would collect the necessary data, we are revising the *Capacity of Statewide Longitudinal Data System* requirement to clarify that States may use documented alternative valid and reliable methods for collecting student-level employment outcome data. We are also revising selection criteria (b), *Capacity of statewide longitudinal data system,* and (f), *Evaluation,* to reflect the change related to the collection of individual student employment outcome data.

Changes: We have made the following changes to the requirements and selection criteria:

- We have revised paragraph (e) of the *Capacity of Statewide Longitudinal Data System* requirement to clarify that States may collect individual student employment outcome data using documented valid and reliable alternative methods such as surveys that have, at a minimum, a 70 percent response rate.
- We have revised the *Evaluation* requirement to reflect that States are permitted to use any documented valid and reliable alternative method for collecting individual student employment outcome data.
- We have revised paragraph (b)(1)(v) of selection criterion (b), *Capacity of statewide longitudinal data system,* to indicate that, States may collect individual student employment outcome data using documented valid and reliable alternative methods such as surveys that have, at a minimum, a 70 percent response rate.
- We have revised paragraph (f)(4) of selection criterion (f), *Evaluation,* to indicate that States may use any documented valid and reliable alternative methods for collecting individual student employment outcome data.

Comment: One commenter stated that the requirement that a State implement its selected POS in at least one urban, one suburban, and one rural LEA would be too restrictive because some States have only one LEA. Another commenter noted that in some instances, an entire State would be considered rural, which would make it difficult for the State to implement the selected POS in all three types of communities. Another commenter requested clarification as to whether one LEA would be required to implement the POS in all three types of communities—urban, suburban, and rural.

Discussion: It was not our intent to require each participating LEA to implement the selected POS in all three types of communities. We intended this requirement to apply to States, rather than LEAs, and are revising the requirement accordingly. We also recognize that there may be circumstances that preclude a State from implementing the selected POS in at least one urban, suburban, and rural community. In that regard, the requirement provides that to the extent feasible, the applicant must implement the POS in at least one of each of these types of communities. Where implementation of the POS in each of these types of communities is not feasible the applicant must describe those circumstances in its application.

It was not our intent to exclude States that have a single LEA from eligibility under this program. We are revising the *Local Implementation* requirement to provide that States with a single LEA must implement the selected POS in at least three high schools, in concert with at least one of the LEA's postsecondary partners and that all requirements that apply to LEAs apply to the participating high schools and their postsecondary partners.

Changes: We have revised the *Local Implementation* requirement to clarify that, to the extent feasible, the State, not the LEA, must implement the selected POS in at least one urban, one suburban, and one rural community and where circumstances preclude a State from serving at least one of each of these types of communities, the applicant must provide an explanation in its application. We have also provided in this requirement that States with a single LEA must implement the selected POS in at least three high schools, in concert with at least one of the LEA's postsecondary partners and that all requirements that apply to LEAs apply to the participating high schools in the single LEA and their postsecondary partners.

We also have revised selection criterion (c), *Local implementation plan,* by modifying paragraph (2) and adding a new paragraph (6) to conform to these changes.

Comment: Two commenters opposed the *Existing Technical Skills Assessments* requirement because of the high cost of developing such assessments. One commenter recommended that applicants be permitted to use a small percentage of the grant funds to promote the development of third-party assessments, if appropriate.

Discussion: Because we recognize that assessment development can be both costly and time-consuming, we have retained the *Existing Technical Skills Assessment* requirement without change. The requirement is for use of technical skills assessments that are already in existence, not for the development or use of new assessments. Based on other comments we received on the NPP and other sources of information,[3] which indicate that technical skill assessments are used by 45 States at the secondary level and 32 States at the postsecondary level, we have concluded that both reliable and

[3] See the State profiles for CTE programs at: *http://cte.ed.gov/stategrants/stateprofiles.cfm*

validated third-party technical skills assessments based on industry standards, and State-developed technical skills assessments are in existence, and therefore, that applicants do not need a portion of the grant funds to develop new third-party assessments.

Changes: None.

Comment: One commenter inquired about the level of funding for the proposed grants and on the number of States that would be awarded grants under any competition under this program. Two commenters recommended that, at a minimum, grantees would need a five-year project period to follow students through a full POS experience and show impact. The five years would include two years of secondary education, two years of postsecondary education, and one year in the workplace.

Discussion: Information regarding the estimated number of grants to be awarded, the estimated level of funding, and the length of the project period is in the notice inviting applications for this program that is published elsewhere in this issue of the **Federal Register**. We have established a four-year project period for this program because the Act is scheduled to expire in 2012. Subject to the availability of funds, we will use funds appropriated under the Act through FY 2012 to support initial and continuation grant awards to States selected for funding under this competition, for a total of four years. However, during year 4 of the project, we will assess the substantive progress made by the program grantees to determine appropriate next steps in our support of CTE POSs.

Changes: None.

Comment: One commenter questioned whether the postsecondary performance measurement data for these grants would include data on postsecondary CTE students who had entered the POSs in the years prior to the awarding of the grant.

Discussion: The performance measures that are identified in the *Evaluation* requirement include a measure regarding postsecondary credential, certificate, or diploma attainment. Additionally, we will require grantees to collect baseline data on postsecondary students who have not had the benefit of participating in a POS aligned with the 10 Framework components in order to compare the outcomes for those students with the outcomes for students who participate in a POS aligned with the 10 Framework components. We are revising the *Evaluation* requirement to make this clear. We will address this and other issues concerning evaluation and data collection under this program at the required Project Evaluation Design meeting in Washington, DC.

Changes: We have revised the *Evaluation* requirement to specify that States will be required to collect baseline data on postsecondary students who have not had the benefit of participating in a POS aligned with the 10 Framework components.

Comment: One commenter requested clarification as to how we would provide technical assistance to the funded States.

Discussion: We will make awards under the Rigorous Programs of Study program under the terms of a cooperative agreement in order to maintain substantial involvement in the implementation of funded projects and to provide close Department oversight of project activities. In addition, we will provide technical assistance to States receiving grant awards for this program through the Project Evaluation Design meeting, annual POS grantee meetings, and the National Research Center for Career and Technical Education.

Changes: None.

Comment: One commenter recommended that the Department provide funding to support a three-year study to determine the success of POS implementation at the pilot sites, including the effectiveness of the articulation agreements among secondary, two-year postsecondary, and four-year postsecondary institutions.

Discussion: We agree with the commenter that such agreements are important for the successful implementation of POSs and articulation agreements—referred to in this notice as "credit transfer agreements"—are among the 10 required Framework components that all participating LEAs must have in place when implementing their POSs. However, we do not intend to use funds under this competition to support a three-year study to determine the success of POS implementation at pilot sites, including the effectiveness of the articulation agreements among secondary, two-year postsecondary, and four-year postsecondary institutions. Rather the primary focus of this program is the evaluation of the impact of participation in a POS on enrolled students.

Changes: None.

Comment: One commenter stated that the Department should focus funding and accountability efforts on building a seamless POS program that covers kindergarten through a four-year postsecondary degree program.

Discussion: Section 122(c)(1)(A) of the Act specifies that CTE POSs must—incorporate secondary and postsecondary elements; align secondary education with postsecondary education; offer secondary students the opportunity to earn postsecondary credits; and lead to a postsecondary credential, certificate, or degree. Because the requirements of the Act for CTE POSs reference only secondary and postsecondary education, this program focuses on POSs that encompass grades 9 through 16 and secondary education through postsecondary degree programs. Accordingly, we cannot expand the requirements for this program to include the elementary school grades.

Changes: None.

Comment: One commenter observed that two-year institutions sometimes establish geographic areas of services that are barriers to Statewide POS development, and such service areas should be eliminated.

Discussion: The geographic areas that are served by community or technical colleges are not determined by the Department but, rather, by the States, the postsecondary institutions themselves, or both. The determination of which geographical area is to be served by which community or technical college is not one for the Department. It is a State matter.

Changes: None.

Comment: One commenter recommended that the Department fund the development of POSs in technical areas aligned with economic trends and future innovative fields.

Discussion: Applicants under this program have the flexibility to select a POS that the State has developed for an emerging field in response to labor market data and economic and workforce trends, so long as the selected POS is built and sustained with the 10 Framework components and so long as the LEAs chosen for participation in the POS project have all 10 Framework components in place to support the POS either at the start of the POS project or no later than the beginning of year 2 of the project.

Changes: None.

Comment: One commenter recommended that funding be provided for teachers and administrators to obtain real world exposure to the workplace, and to work collaboratively to align curricula to meet industry, two-year degree, and four-year degree requirements.

Discussion: We agree with the commenter that it may be beneficial for teachers and administrators to obtain real world exposure to the workplace so

that teachers are better equipped to implement curricula that are aligned with industry and degree requirements. Paragraph (c) of the *Selected Program of Study* requirement provides for the POS to include sustained, intensive, and focused professional development opportunities for administrators, teachers, and faculty that foster POS design, implementation, and maintenance. An applicant is free to include in its proposal professional development that includes real-world exposure to the workplace.

Changes: None.

Comment: One commenter asked if funding could be used to implement a selected POS in at least eight secondary, four postsecondary two-year, and four postsecondary four-year pilot sites for a total of 16 sites in a given State.

Discussion: Under the *Local Implementation* requirement, States are required to implement the selected POS in at least three LEAs that contain high schools, in concert with at least one of the LEA's postsecondary partners. At a minimum, each of the three participating LEAs must implement the selected POS in at least one high school and in at least one postsecondary institution (either two-year or four-year). Because these are minimal requirements only, nothing would preclude an applicant from proposing to implement the selected POS in additional sites.

We are revising the requirement to specify that an applicant's implementation of the selected POS must be in concert with "at least one of" rather than "each of" the LEA's postsecondary partners to clarify the minimum criteria for implementation of the POS at the secondary and postsecondary levels.

Changes: We have revised the *Local Implementation* requirement to specify that implementation of the POS must be in concert with at least one of the LEA's postsecondary partners, i.e., at least one postsecondary institution (either two-year or four-year).

Comment: One commenter expressed concern that small States may have insufficient State leadership funds to use to meet the 30 percent match specified in the competitive preference priority and so would be unable to compete for additional points under that priority.

Discussion: While we agree with the commenter that some States may have insufficient State leadership matching funds, under the final priority, applicants may also choose to meet the priority by obtaining non-Federal private contributions, including in-kind contributions, such as facilities, equipment, supplies, services, and other resources, to make the 30 percent contribution.

Changes: None.

Comment: One commenter noted that, because some States do not administer their education programs under legislation but rather under administrative rules and regulations, such rules and regulations should be referenced in paragraph (a), *Legislation, Resources, and Policies,* under the *Selected Program of Study* proposed requirement.

Discussion: We agree with the commenter and are revising paragraph (a) of the *Selected Program of Study* requirement regarding legislation and policies to include a reference to rules and regulations.

Changes: We have revised paragraph (a) of the *Selected Program of Study* requirement, and paragraph (a)(3)(i) of selection criterion (a), *State capacity to implement a rigorous program of study,* to add references to rules and regulations.

Comment: One commenter recommended that partnerships among secondary, postsecondary, and business and industry be a requirement for the design and implementation of CTE POSs.

Discussion: Paragraph (b) under the *Selected Program of Study* requirement requires ongoing relationships among education, business, and other community stakeholders that support POS design, implementation, and maintenance. Because section 122(c)(1)(A) of the Act clearly describes POSs as encompassing both secondary and postsecondary education, we require both secondary and postsecondary education stakeholders, along with business and other community stakeholders to participate in the partnership. Further, it is the responsibility of the applicant to identify the specific members of the partnership and to describe the ongoing relationships among them.

Changes: None.

Comment: None.

Discussion: In developing the NFP, we considered the various types of education community stakeholders that could support POS design, implementation, and maintenance in an ongoing partnership, as provided for in paragraph (b) of the *Selected Program of Study* requirement. Although we are not providing examples of specific education community stakeholders in the text of the requirement, we clarify here that education community stakeholders could include secondary and postsecondary public and private school officials.

Changes: None.

Comment: One commenter requested clarification regarding the performance measures for which States receiving grant awards under this program would be required to collect data.

Discussion: States receiving grant awards under this program will be required to collect and report data annually on the seven performance measures required for this program that are listed under the *Evaluation* requirement.

Changes: None.

Comment: One commenter identified inconsistencies in wording between the Framework and the proposed requirements and selection criteria, and requested clarification.

Discussion: Currently, several national associations, organizations, and States are using the Framework as a means of providing technical assistance or as a self-assessment tool. Because we used the 10 Framework components to develop the requirements and selection criteria for this program, we found it necessary to make several changes in wording to adapt it for that purpose. To maintain as much consistency as possible, we are revising the headings under the *Selected Program of Study* requirement to conform to those in the Framework.

Changes: We have revised the headings under the *Selected Program of Study* final requirement to align them with the 10 Framework components.

Comment: One commenter expressed concern that the POS Framework is being used as the only assessment tool for POSs and recommended that the Secretary permit other assessment tools to be used.

Discussion: Under this program, we are requiring States receiving grant awards to use the 10 Framework components in order to ensure the rigor of funded POSs; to evaluate the effectiveness of each of the 10 Framework components in each participating LEA; and to use a self-assessment instrument based on the 10 Framework components as part of each State's project evaluation. However, nothing would preclude a grantee from using other appropriate assessments, in addition to the Framework, that would yield relevant information on the implementation and effectiveness of the selected POS.

Changes: None.

Final Priority

Commitment to the Project

The Assistant Secretary for Vocational and Adult Education establishes a priority for applications that propose to contribute funds from other sources to

the total cost of the project. To meet this priority, the applicant must propose a budget that describes how the State will contribute 30 percent of the total cost of the project from other sources. For these purposes, the applicant may use—

(a) State leadership funds awarded under section 111 of the Act and as specified in section 112(a)(1) of the Act;

(b) Non-Federal contributions including in-kind contributions such as use of facilities, equipment, supplies, services, and other resources; or

(c) A combination of State leadership funds and non-Federal contributions.

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 preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary for Vocational and Adult Education 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.

Selected Program of Study: To be eligible for funding an applicant is required to demonstrate that it has selected for implementation a State-developed or State-approved POS that is built and sustained with all of the following 10 Framework components:

(a) Legislation and Policies: State and local legislation, rules and regulations, or administrative policies that promote POS development and implementation;

(b) Partnerships: Ongoing relationships among education, business, and other community stakeholders that support POS design, implementation, and maintenance;

(c) Professional Development: Sustained, intensive, and focused professional development opportunities for administrators, teachers, and faculty that foster POS design, implementation, and maintenance;

(d) Accountability and Evaluation Systems: Accountability and evaluation systems and strategies that gather quantitative and qualitative data on both POS components and student outcomes in order to inform ongoing efforts to develop and implement POSs and to determine their effectiveness;

(e) College- and Career-Readiness Standards: POS content standards that define what students are expected to know and be able to do to enter and advance in college, their careers, or both, and that include aligned academic and technical content;

(f) Course Sequences: Course sequences within a POS that help students transition to postsecondary education without needing to duplicate classes or enroll in remedial courses.

(g) Credit Transfer Agreements: Formal credit transfer agreements among secondary schools and postsecondary institutions;

(h) Guidance Counseling and Career Advisement: Systems that provide career counseling and academic advisory services to help students make informed decisions about which POS to pursue;

(i) Teaching and Learning Strategies: Innovative and creative instructional approaches that enable teachers to integrate academic and technical instruction and also enable students to apply academic and technical learning in their POS coursework; and

(j) Technical Skills Assessments: Existing valid and reliable technical skills assessments that provide ongoing information on the extent to which students are attaining the necessary knowledge and skills for entry into and advancement in postsecondary education and careers in their chosen POS.

Each of these 10 components of the Framework has unique sub-components. The sub-components for each of the 10 Framework components are in paragraph (a)(3) of selection criterion (a), *State capacity to implement a rigorous program of study.* Each State and its participating LEAs must use all 10 Framework components, must use each of the sub-components of the 10 Framework components that the State deems relevant to the selected POS, and must explain how it plans to support the selected POS using the relevant sub-components.

Existing Technical Skills Assessments: Applicants must propose a project to implement a State-developed or State-approved POS for which valid and reliable technical skills assessments (either third-party industry-recognized assessments, or State-developed or State-approved technical skills assessments based on industry standards that grant high school or postsecondary credit, or both) have been developed.

Local Implementation: The applicant must propose a project to implement the selected POS in at least three LEAs that contain high schools, in concert with at least one of the LEA's postsecondary partners, i.e., at least one postsecondary institution (either two-year or four-year). If a participating LEA contains more than one high school, the LEA must implement the selected POS in at least one of its high schools. To the extent feasible, the State must implement the selected POS in at least one urban, one suburban, and one rural community within the State, and where circumstances preclude a State from serving at least one of each of these types of communities, provide an explanation in its application. To be eligible for funding an applicant is required to demonstrate that the LEAs chosen for participation in the POS project have the capacity to have all 10 Framework components in place either at the start of the POS project or no later than the beginning of year 2 of the project. The applicant must include a letter of commitment from each LEA, expressing its interest in participating in the project and its commitment to implement the selected POS as prescribed by the State in years 2 through 4 of the project and to maintain constancy in the implementation of the selected POS. During year 1 of the project, CTE staff from the funded States must provide technical assistance to their participating LEAs in order to strengthen weak Framework components or incorporate missing components, so that all 10 Framework components are in place to support the POS when it is implemented at the LEA level. The participating LEAs must implement the selected POS during years 2 through 4 of the project, beginning at the start of the academic year corresponding to year 2 of the project. The applicant must include a plan that describes how CTE State staff will continue to work closely with the LEAs throughout the project period, and provide technical assistance and support to ensure constancy in the implementation of the selected POS in the participating LEAs.

Applicants in States that have a single LEA must implement the selected POS in at least three high schools, in concert

with at least one of the LEA's postsecondary partners, i.e., at least one postsecondary institution (either two-year or four-year). To the extent feasible, the participating three high schools must represent urban, suburban, and rural communities and, where circumstances preclude a State from serving at least one of each of these types of communities in its three participating high schools, the State must provide an explanation in its application. All requirements that apply to LEAs in this notice would apply to the participating high schools and their postsecondary partner(s).

Evaluation: Applicants must propose to conduct an annual evaluation of the project to assess the constancy of the implementation of the selected POS in the participating LEAs and the effectiveness of each of the 10 Framework components. To ensure consistency of implementation across the selected LEAs, CTE staff from the funded States must use a self-assessment instrument based on the 10 Framework components as part of the grant's project evaluation.

Applicants must also use student outcome data to assess the progress of students enrolled in each selected POS. To ensure consistency across the funded States, State staff must attend a POS Evaluation Design meeting in Washington, DC, following their receipt of the grant award, to discuss and possibly refine the grantee self-assessment tools related to the 10 Framework components that are developed by the grantees, and to work with OVAE and with each other to develop a plan for the States' use of student outcome data to assess the progress of students enrolled in each selected POS. This meeting will address evaluation and data collection issues, such as, student definitions; the number of students to be selected and the method of student selection to be followed; strategies for comparing outcomes for students who participate in the POS to other students who do not; the identification of potential comparison groups through the States' longitudinal data systems, including any documented valid and reliable alternative method of collecting individual student employment outcome data; and the timing of reporting. After the meeting, we will include the agreed-upon plan for the State's use of the student outcome data as an addendum to each grantee's cooperative agreement.

In addition to requiring applicants to use student outcome data to assess the progress of students enrolled in each selected POS, the State must collect baseline data on postsecondary students who have not had the benefit of participating in a POS aligned with the 10 Framework components in order to compare the outcomes for those students with the outcomes for students who participate in a POS aligned with the 10 Framework components. The State must also collect and report data annually on the following seven performance measures, which are based on the indicators of performance required under section 113(b) (State Performance Measures) and section 203(e) (Tech Prep Indicators of Performance and Accountability) of the Act:

(a) Secondary school completion. The percentage of secondary students participating in the POS supported by the grant award who earn a high school diploma.

(b) Technical skills attainment. The percentage of secondary students participating in the POS supported by the grant award who attain technical skills.

(c) Earned postsecondary credit during high school. The percentage of secondary students participating in the POS supported by the grant award who earn postsecondary credit.

(d) Enrollment in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in postsecondary education by the fall following high school graduation.

(e) Enrollment in postsecondary education in a field or major related to the secondary POS. The percentage of secondary students participating in the POS supported by the grant award who enroll in a postsecondary education program in a field or major related to the participant's secondary POS.

(f) Need for developmental course work in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in one or more postsecondary education developmental courses.

(g) Postsecondary credential, certificate, or diploma attainment. The percentage of secondary students participating in the POS supported by the grant award who attain an industry-recognized credential, certificate, or associate's degree, within two years following enrollment in postsecondary education.

Capacity of Statewide Longitudinal Data System: Applicants must propose the use of a longitudinal data system that has the capacity to link and share data among systems housing different types of data, in order to collect valid and reliable data on the required performance measures identified in the *Evaluation* requirement. The longitudinal data system must contain, at a minimum, the elements listed below, which elements are consistent with section 6401(e)(2)(D) of the America COMPETES Act (Pub. L. 110–69):

(a) Statewide unique student identifiers;

(b) Student-level enrollment data;

(c) Student-level course completion (transcript) data;

(d) The ability to match student-level secondary and postsecondary data;

(e) The ability to match student-level data to employment outcome data, using—

(1) Unemployment Insurance (UI) wage records, or

(2) Documented valid and reliable alternative methods such as surveys that have, at a minimum, a 70 percent response rate;

(f) A State data audit plan to verify that the education data are valid and reliable; and

(g) An assurance that the use of data will be consistent with the requirements and protections contained in the Family Educational Rights and Privacy Act (FERPA).

Dissemination: Applicants must propose to implement a dissemination plan for the project. The plan must include the development and maintenance of a project Web page for posting project materials, such as: Materials describing the State's process for approving POSs submitted by local recipients of funds; curricula developed for the selected POS; technical assistance materials provided to the participating LEAs and to other local recipients of funds, if applicable; professional development materials; materials describing evaluation results, including performance data on the required performance measures based on the indicators of performance; and other materials containing practical information that would be useful to other States in their efforts to implement and evaluate POSs. Applicants must also participate in POS activities sponsored by the Department, such as annual POS grantee meetings in which grantees describe the progress of their projects and discuss common issues, strategies, and models of best practices; OVAE/POS grantee presentations at the States' Annual National Career Clusters Institutes; OVAE/POS grantee presentations at annual NASDCTEc meetings; and presentations at OVAE-sponsored data quality meetings.

Cooperative Agreement: We plan to make each award to grantees under this

program under the terms of a cooperative agreement. We expect to work closely with the funded States to maintain substantial involvement in project implementation, and to provide oversight on project activities by working collaboratively to develop a plan for the use of student outcome data, reviewing and approving project activities, reviewing and approving one stage of work before the grantee can begin a subsequent stage during the project period, and halting an activity if it is not consistent with the program requirements.

Final Selection Criteria

The Assistant Secretary establishes the following selection criteria for evaluating an application under a POS competition. We may apply one or more of these criteria in any year in which we hold a competition under this program. In the notice inviting applications published elsewhere in this issue of the **Federal Register**, in the application package, or in both, we announce the maximum possible points assigned to each criterion.

(a) *State capacity to implement a rigorous program of study:* In determining the applicant's capacity to implement a rigorous POS, we review each application to determine the extent to which:

(1) The applicant proposes to build on existing State initiatives and partnerships in implementing the proposed project.

(2) The applicant selects a POS that will provide training leading to high-growth, high-demand, or high-wage occupations as determined through analysis of the national, State, or local labor market.

(3) The applicant provides evidence that it has selected a State-developed or State-approved POS that is built and sustained with the 10 Framework components identified in paragraphs (i) through (x); that it has identified which of the sub-components from among those listed under each Framework component are relevant to the selected POS; and that it plans to use those relevant sub-components in its POS and explains how it proposes to do so.

(i) State and local legislation, rules and regulations, or administrative policies that promote POS development and implementation, such as—

(A) The allocation of State or local funding (and other non-Federal resources) designed to promote POS development and long-term sustainability;

(B) The use of established, formal procedures for the design, implementation, and continuous improvement of POSs;

(C) Adherence to policies that ensure opportunities for any interested secondary student to participate in a POS; and

(D) The use of individual graduation or career plans for participating students.

(ii) Ongoing relationships among education, business, and other community stakeholders that support POS design, implementation, and maintenance, such as by—

(A) Using written memoranda that specify the roles and responsibilities of partnership members;

(B) Conducting ongoing analyses of economic and workforce trends to identify POSs that should be created, expanded, or, if appropriate, discontinued;

(C) Linking POS development to existing initiatives that promote workforce and economic development; and

(D) Identifying, validating, and updating technical and workforce readiness skills to be taught within POSs.

(iii) Sustained, intensive, and focused professional development opportunities for administrators, teachers, and faculty that foster POS design, implementation, and maintenance, and that—

(A) Support the alignment of academic and technical curriculum within the POS from grade to grade (within grades 9 through 12) and from secondary to postsecondary education;

(B) Support the development of integrated academic and CTE curriculum and instruction within the POS;

(C) Ensure that teachers and faculty have the necessary content knowledge to align and integrate curriculum and instruction within the POS;

(D) Foster innovative teaching and learning strategies within the POS; and

(E) Assist administrators, teachers, and faculty to use assessment data for POS program and instructional improvement.

(iv) Accountability and evaluation systems and strategies that gather quantitative and qualitative data on all 10 Framework components as well as on student outcomes to inform ongoing efforts to develop and implement POSs and to determine their effectiveness, and that—

(A) Yield valid and reliable data on key student outcomes (indicators of performance) referenced in the Act and other relevant Federal and State legislation; and

(B) Provide timely data to inform ongoing efforts to develop, implement, evaluate, and improve the effectiveness of POSs.

(v) POS content standards that define what students are expected to know and be able to do to enter and advance in college, their careers, or both, and that include aligned academic and technical content, and that—

(A) Are developed and continually validated in collaboration with secondary, postsecondary, and industry partners;

(B) Incorporate essential knowledge and skills that students must master regardless of their chosen career area or POS;

(C) Provide the same rigorous knowledge and skills in reading or language arts and in mathematics that employers and colleges expect of high school graduates; and

(D) To the extent practicable, are internationally benchmarked so that students are prepared to succeed in a global economy.

(vi) Course sequences within a POS that help students transition to postsecondary education without the need to duplicate classes or enroll in remedial courses, as evidenced by—

(A) Course sequence plans that map out recommended academic and career and technical courses for the POS;

(B) Course sequence plans that begin with introductory courses that provide broad foundational knowledge and skills common across all POSs and then progress to more occupationally specific courses that provide the knowledge and skills required for entry into and advancement in the selected POS; and

(C) Opportunities for students to earn postsecondary credit for coursework taken during high school.

(vii) Formal credit transfer agreements among secondary schools and postsecondary institutions that—

(A) Provide a systematic, seamless process for students to earn college credit for postsecondary courses taken in high school, transfer high school credit to any two- or four-year institution in the State that offers the POS, and transfer credit earned at a two-year college to any other two- or four-year institution in the State that offers the POS;

(B) Record college credit earned by high school students on their high school transcripts at the time the credit is earned so that they can transfer seamlessly into the college portion of the POS without the need for additional paperwork or petitioning for credit; and

(C) Describe the expectations and requirements for teacher and faculty qualifications, course prerequisites, postsecondary entry requirements, locations of courses, tuition

reimbursement, and the credit transfer process.

(viii) Systems that provide career counseling and academic advisory services to help students make informed decisions about which POS to pursue and that—

(A) Are based on State or local guidance and counseling standards, such as the National Career Development Guidelines;

(B) Ensure that guidance counselors and academic advisors have access to up-to-date information about POS offerings to aid students in their decision-making;

(C) Offer information and tools to help students learn about postsecondary education and career options, including about the prerequisites for particular POSs;

(D) Provide resources for students to identify career interests and aptitudes and to select an appropriate POS;

(E) Provide information and resources for parents, including workshops on college and financial aid applications, on helping their children prepare for college and careers; and

(F) Provide Web-based resources and tools for obtaining student financial assistance.

(ix) Innovative and creative instructional approaches that enable teachers to integrate academic and technical instruction and also enable students to apply academic and technical learning in their POS coursework, as evidenced by—

(A) Interdisciplinary teaching teams of academic and career and technical secondary teachers or postsecondary faculty;

(B) The use of contextualized work-based, project-based, and problem-based learning approaches; and

(C) The use of teaching strategies that foster team-building, critical thinking, problem-solving, and communication skills.

(x) Existing valid and reliable technical skills assessments that provide ongoing information on the extent to which students are attaining the necessary knowledge and skills for entry into and advancement in postsecondary education and careers in their chosen POS and that—

(A) Are either third-party assessments recognized by industry or are technical skills assessments developed or approved by the State that are based on industry standards;

(B) Measure student attainment of technical skill proficiencies at multiple points during a POS;

(C) Incorporate, to the greatest extent possible, performance-based assessment items through which students must demonstrate the application of their knowledge and skills; and

(D) Result in the awarding of secondary credit, postsecondary credit, or special designation on a student's high school diploma.

(b) *Capacity of statewide longitudinal data system:* In determining the State's capacity to collect longitudinal data on a variety of secondary, postsecondary, and employment outcomes for individual students in order to assess the progress of students enrolled in the selected POS, we review each application to determine the extent to which:

(1) The State's longitudinal data system contains, at a minimum, the following elements—

(i) Statewide unique student identifiers;

(ii) Student-level enrollment data;

(iii) Student-level course completion (transcript) data;

(iv) The ability to match student-level secondary and postsecondary data;

(v) The ability to match student-level data with employment outcome data, using—

(A) Unemployment Insurance (UI) wage records; or

(B) Documented valid and reliable alternative methods such as surveys that have, at a minimum, a 70 percent response rate; and

(vi) A State data audit plan to verify that the education data are valid and reliable.

(2) The applicant provides evidence that project staff will be able to work cooperatively with State data specialists and to access the student outcome data needed to meet annual evaluation and reporting requirements for the POS project.

(c) *Local implementation plan:* In determining the quality of the plan for local implementation of the selected POS, we review each application to determine the extent to which—

(1) The applicant identifies each of the LEAs it has selected for local implementation of the POS and provides evidence of each LEA's capacity to implement the selected POS and the 10 Framework components, either at the start of the POS project or no later than the beginning of year 2 of the project, as well as the estimated number of students who would participate in the POS in years 2 through 4 of the project, by grade level;

(2) To the extent feasible, the participating LEAs represent urban, suburban, and rural communities, and where circumstances preclude a State from serving at least one of each of these types of communities, the State has provided an explanation in its application;

(3) For participating LEAs prepared to incorporate all 10 elements of the Framework in years 2 through 4 of the project, the applicant includes a letter of commitment from each LEA, expressing its interest in participating in the project and its commitment to implementing the selected POS as prescribed by the State in years 2 through 4 of the project and to maintain constancy in the implementation of the selected POS;

(4) For participating LEAs that do not have all 10 Framework components in place at the start of the project, the applicant outlines the specific actions it will take to ensure that weak or missing Framework components are strengthened or created so that all 10 Framework components are in place at those LEAs and the LEAs are ready to implement the POS by the beginning of the academic year corresponding to year 2 of the project;

(5) The applicant outlines a plan to provide ongoing oversight and technical assistance to the participating LEAs throughout the project period, to ensure constancy in the implementation of the selected POS across the participating LEAs; and

(6) An applicant in a State that has a single LEA outlines a plan—

(i) To implement the selected POS in at least three high schools, in concert with at least one of the LEA's postsecondary partners, i.e., at least one postsecondary institution (either two-year or four-year); and

(ii) To the extent feasible, the participating three high schools represent urban, suburban, and rural communities and, where circumstances preclude a State from serving at least one of each of these types of communities in its three participating high schools, the State has provided an explanation in its application.

(d) *Project management.* In determining the quality of the management plan for the proposed project, we review each application to determine the extent to which—

(1) The management plan incorporates, at a minimum, each of the requirements included in this notice and identifies specific and measurable objectives and tasks to be undertaken to accomplish each project activity;

(2) The management plan assigns responsibility for the accomplishment of project tasks to specific partners or project personnel and provides timelines that will result in the timely completion of all required project activities within each phase of the project;

(3) The Project Director and other key personnel clearly have the professional qualifications and experience necessary to implement their assigned project tasks; and

(4) The time commitments of the Project Director, key personnel, and partners are appropriate to the tasks assigned.

(e) *Adequacy of resources.* In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support to be provided (i.e., facilities, equipment, supplies, or other resources) by participating agencies and institutions at the State and local levels.

(2) Whether the budget is appropriate and the costs are reasonable in relation to the objectives and design of the proposed project.

(f) *Evaluation:* In determining the quality of the proposed project evaluation, we review each application to determine the extent to which—

(1) The proposed project evaluation is feasible and appropriate for evaluating the constancy of the implementation of the selected POS by the participating LEAs in years 2 through 4 of the project;

(2) The proposed evaluation is feasible and appropriate for evaluating the effectiveness of each of the 10 Framework components in each LEA;

(3) The proposed evaluation will be conducted by individuals or entities that possess the necessary background and expertise in project evaluation; and

(4) The applicant expresses its commitment to participate in the Department's Evaluation Design Meeting and has included suggestions regarding the use of student outcome data that it would be able to access through the State's longitudinal data system, including any documented valid and reliable alternative methods for collecting individual student employment outcome data, to assess the progress of students enrolled in the POS.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and selection criteria, 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 priority, requirements, and selection criteria justify the costs. This action would provide additional resources to States to help them implement an existing statutory requirement under the Act, the implementation of programs of study at the State and local levels.

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.

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: August 3, 2010.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2010–19487 Filed 8–5–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting and Hearing Agenda.

DATE AND TIME: Wednesday, August 18, 2010, 1–4:30 p.m. EDT.

PLACE: Hyatt Regency Grand Cypress, 1 Grand Cypress Boulevard, Orlando, FL 32836, (407) 239–1234.

MEETING AGENDA: The Commission will hold a public meeting to discuss the following matters: (1) The EAC Election Day Survey; and (2) voting system test suites. Commissioners will consider other administrative matters.

HEARING AGENDA: The Commission will conduct a public hearing to receive testimony on proposed changes to its regulations pertaining to the National Voter Registration Act (NVRA). Members of the public who wish to speak at the hearing regarding the proposed NVRA regulations may send a request to participate to the EAC via e-mail to *testimony@eac.gov* by 5 p.m. EDT August 16, 2010. Members of the public may also sign up at the public meeting as long as they do so before the public hearing begins and the EAC has not already received a maximum of ten requests via email to testify at the hearing. Due to time constraints, the EAC can select no more than ten of those who request to participate. Each participant will be allotted three-minutes each to share their viewpoint. Participants will be selected on a first-come, first-served basis. However, to maximize diversity of input, only one participant per organization or entity will be chosen. Participants may also submit written testimony to be published at *http://www.eac.gov.* All requests to testify at the public hearing submitted by 5 p.m. EDT on August 16, 2010, must include a description of what will be said, contact information which will be used to notify the requestor of the status of his/her request (phone number on which a message may be left or e-mail), and include the subject/attention line (or on the envelope if by mail): **Testimony on proposed NVRA regulations**. Please note that testimony will be available to the public at *http://www.eac.gov*.

Written testimony from members of the public regarding proposed NVRA regulations will also be accepted. This testimony will be included as part of the written record of the hearing, and available on our website. Written testimony must be submitted before the

end of the public hearing, and received by 4:30 p.m. EDT on Aug 18, 2010. Written testimony should be submitted via e-mail at *testimony@eac.gov,* via mail addressed to the U.S. Election Assistance Commission 1201 New York Avenue NW., Suite 300, Washington, DC 20005, or by fax at 202–566–1392. All correspondence that contains written testimony must have in the subject/attention line (or on the envelope if by mail): **Written testimony on proposed NVRA regulations**.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

*View *EAC Regulations Implementing Government in the Sunshine Act*.

THIS MEETING AND HEARING WILL BE OPEN TO THE PUBLIC.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Donetta Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–19513 Filed 8–4–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will provide information for use in an impact evaluation of DOE's Solar Decathlon Program. The collection consists of four questionnaires addressed to (1) homeowners who visited a Solar Decathlon, (2) homeowners who did not visit a Solar Decathlon, (3) former students who participated in their school's Solar Decathlon entry, and (4) former students who did not participate in a Solar Decathlon entry. The questionnaires will collect information on the respondents' knowledge of solar energy and energy efficiency and on installations of solar-energy and energy-efficiency equipment with which the respondents have been personally involved. The former-student questionnaires will also collect information on types of employment since leaving college.

DATES: Comments regarding this collection must be received on or before September 7, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; And to:

Jeffery Dowd, Solar Decathlon Evaluation Lead, EE–3B, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (O) 202–586–7258, (Fax) 202–586–2176, *Jeff.Dowd@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Jeffery Dowd, Solar Decathlon Evaluation Lead, EE–3B, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (O) 202–586–7258, (Fax) 202–586–2176, *Jeff.Dowd@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) Information Collection Request Title: DOE Solar Decathlon Impact Evaluation Surveys; (3) Type of Request: New collection; (4) Purpose: The information collected by this information collection will be used for an impact evaluation of the Solar Decathlon Program. The evaluation will contribute to the effective administration, monitoring, and management of the Solar Decathlon Program; and for measuring attainment of DOE's program goals as required by the Government Performance and Results Act and the Office of Management and Budget's Program Assessment Rating Tool. The likely respondents are homeowners and former college students as described in the **SUMMARY**; (5) Annual Estimated Number of Respondents: 810; (6) Annual Estimated Number of Total Responses: 810; (7) Annual Estimated Number of Burden Hours: 104; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: None.

Statutory Authority: Department of Energy Organization Act of 1977 (42 U.S.C. 5815(b)); Government Performance and Results Act (31 U.S.C. 1115(a)); Executive Order 13450, November 13, 2007; and Memo, Peter R. Orszag, Director, Office of Management and Budget, "Increased Emphasis on Program Evaluations," dated October 7, 2009.

Issued in Washington, DC, on July 21, 2010.

Scott Hine,

Acting Deputy Assistant Secretary-Business Administration (DAS–BA), Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2010–19404 Filed 8–5–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–369]

Application to Rescind Presidential Permit; Joint Application for Presidential Permit; British Columbia Transmission Corporation and British Columbia Hydro and Power Authority

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: British Columbia Transmission Corporation (BCTC) and British Columbia Hydro and Power Authority (BC Hydro) filed a joint application to voluntarily transfer the BCTC facilities authorized by Presidential Permit No. PP–22, as amended, to BC Hydro. The application requested that the Department of Energy (DOE) rescind the Presidential permit held by BCTC and simultaneously issue a new permit to BC Hydro covering the same international transmission facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 7, 2010.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by e-mail to *Christopher.Lawrence@hq.doe.gov,* or Michael T. Skinker (Program Attorney) at 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of

a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Existing Presidential permits are not transferable or assignable. However, in the event of a proposed voluntary transfer of facilities, in accordance with DOE regulations at 10 CFR 205.323, the existing permit holder and the transferee are required to file a joint application with DOE that includes a statement of reasons for the transfer.

On June 23, 2010, BCTC and BC Hydro (collectively the "Applicants") jointly filed an application with DOE requesting that Presidential Permit No. PP–22, as amended, issued to BCTC be rescinded and that a new Presidential permit be issued simultaneously to BC Hydro for the same international transmission facilities. The international transmission facilities authorized by Presidential Permit No. PP–22, as amended, include seven single conductor 132 kilovolt (kV) submarine cables and three single conductor 260 kV DC submarine cables. These cables do not connect to any U.S. electrical facility, but rather connect to the mainland of British Columbia, Canada and Vancouver Island. They do, however, pass through the United States territorial waters in the Strait of Georgia.

The Applicants requested that the issuance of the new permit be made effective as of July 5, 2010, to coincide with the date that BCTC was to be integrated into BC Hydro by operation of law pursuant to British Columbia's Clean Energy Act.

Since restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in the Federal Energy Regulatory Commission Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public utilities; FERC Stats. & Regs. ¶31,036 (1996)), as amended. In furtherance of this policy, on July 27, 1999, (64 FR 40586) DOE initiated a proceeding in which it noticed its intention to condition existing and future Presidential permits, appropriate for third party transmission, on compliance with a requirement to provide non-discriminatory open access transmission service. That proceeding is not yet complete. In that proceeding, DOE determined that the international transmission lines authorized by the Presidential permit currently held by BCTC are not appropriate for third party transmission, because the lines are not connected to the U.S. domestic electric power system. Therefore, a requirement to provide non-discriminatory open access transmission service will not be added to the permit being issued to BC Hydro.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with § 385.211 or 385.214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each comment, petition and protest should be filed with DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Glenn S. Benson, Perkins, Coie, LLP, 607 Fourteenth Street, NW., Washington, DC 20005 AND Joanna Sofield, Chief Regulatory Officer, BC Hydro, 333 Dunsmuir Street, 16th Floor, Vancouver British Columbia V6B 5R3.

Before a Presidential permit may be granted or amended, DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.,* granting the Presidential permit or amendment, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded electronically at *http://www.oe.energy.gov/permits/permits_pending.htm.* Upon reaching the home page, select "Pending Applications."

Issued in Washington, DC, on August 2, 2010.

Anthony J. Como,

Director, Permitting and Siting Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–19403 Filed 8–5–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting for the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). The Act requires that agencies publish these notices in the **Federal Register**. The Charter of the Commission can be found at: *http://www.OilSpillCommission.gov.*

DATES: Wednesday, August 25, 2010, 9 a.m.–5 p.m.

ADDRESSES: Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004; telephone number: 1–202–312–1300.

FOR FURTHER INFORMATION CONTACT: Christopher A. Smith, Designated Federal Officer, Mail Stop: FE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–0716 or facsimile (202) 586–6221; e-mail: *BPDeepwaterHorizonCommission@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to examine the relevant facts and circumstances concerning the root causes of the BP Deepwater Horizon explosion, fire and oil spill and to develop options to guard against, and mitigate the impact of, any oil spills associated with offshore drilling in the future.

The Commission is composed of seven members appointed by the President to serve as special Government employees. The members were selected because of their extensive scientific, legal, engineering, and environmental expertise, and their knowledge of issues pertaining to the oil

and gas industry. Information on the Commission can be found at its Web site: *http://www.OilSpillCommission.gov.*

Purpose of the Meeting: Inform the Commission members about the relevant facts and circumstances concerning the root causes of the BP Deepwater Horizon oil disaster. The meeting will provide the Commission with the opportunity to hear presentations and statements from various experts and provide additional information for the Commission's consideration.

Tentative Agenda: The meeting is expected to start on August 25 at 9 a.m. Presentations to the Commission are expected to begin shortly thereafter. Public comments can be made from 3:45 p.m. to 4:45 p.m. The final agenda will be available at the Commission's Web site at *http://www.OilSpillCommission.gov.*

Public Participation: The meeting is open to the public, with capacity and seats available on a first-come, first-serve basis. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Approximately one hour will be reserved for public comments. Time allotted per speaker will be 3 minutes. Opportunity for public comment will be available on August 25 from 3:45 p.m. to 4:45 p.m. Registration for those wishing to request an opportunity to speak opens on-site at 8 a.m. Speakers will be chosen on a first-come, first-serve basis. Members of the public wishing to provide oral comments are encouraged to provide a written copy of their comments for collection at the time of on-site registration.

Those not able to attend the meeting may view the meeting live on the Commission Web site: *http://www.OilSpillCommission.gov.* Those individuals who are not able to attend the meeting, or who are not able to provide oral comments during the meeting, are invited to send a written statement to Christopher A. Smith, Mail Stop FE–30, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or e-mail: *BPDeepwaterHorizonCommission@hq.doe.gov.*

Minutes: The minutes of the meeting will be available at the Commission's Web site: *http://www.OilSpillCommision.gov* or by contacting Mr. Smith. He may be reached at the postal or e-mail addresses above.

Accommodation for the hearing impaired: A sign language interpreter will be on site for the duration of the meeting.

Issued in Washington, DC, on August 3, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–19405 Filed 8–5–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13381–001]

Jonathan and Jayne Chase; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

July 30, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* 13381–001.

c. *Date filed:* July 23, 2010.

d. *Applicant:* Jonathan and Jayne Chase.

e. *Name of Project:* Troy Hydroelectric Project.

f. *Location:* On the Missisquoi River, in the Town of Troy, Orleans County, Vermont. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Jonathan and Jayne Chase, 361 Goodall Road, Derby Line, VT 05830, (802) 895–2980.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 21, 2010.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The Troy Project would consist of: (1) The existing 180-foot-long, 55.7-foot-high Bakers Fall dam with a 134-foot-long spillway and a 3.33-foot-wide, 4.0-foot-high wastegate located below the spillway; (2) an existing 6.9-acre impoundment with a normal water surface elevation of 739.4 feet above mean sea level; (3) an existing intake structure equipped with two 3.33-foot-wide, 4.0-foot-high headgates; (4) an existing forebay with a 2.0-foot-wide, 2.0-foot-high wastegate; (5) an existing 250-foot-long, 6.5-foot-diameter penstock; (6) an existing powerhouse containing one inoperable 600-kilowatt (kW) generating unit; and (7) an existing 90-foot-long, 12.47-kilovolt transmission line.

The applicant proposes to: (1) Rehabilitate and increase the capacity of the inoperable generating unit to 850 kW; and (2) replace the existing transmission line with new transmission line. The proposed project is estimated to generate an average of 1,500 megawatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Vermont State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (i.e. if scoping is waived, the schedule would be shortened).

Issue Deficiency Letter—October 2010

Issue Acceptance letter—January 2011

Issue Scoping Document—February 2011

Notice of application is ready for environmental analysis—April 2011

Notice of the availability of the EA—November 2011

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19381 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13730–000]

New York Tidal Energy Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 30, 2010.

On May 12, 2010, New York Tidal Energy Company filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Astoria Tidal Energy Project, located on the East River, in New York City, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) 50 to 150 Tidal In Stream Energy Conversion (TISEC) devices consisting of, (2) rotating propeller blades, (3) integrated generators with a capacity of 0.5 to 2.0 MW, (4) anchoring systems, (5) mooring lines, and (6) interconnection transmission lines. The project is estimated to have an annual generation of 8.76 gigawatt-hours per-unit per-year, which would be sold to a local utility.

Applicant Contact: Daniel Power, Oceana Energy Company, 1785 Massachusetts Avenue, NW., Suite 100, Washington, DC 20036; *phone:* (202) 465–6405.

FERC Contact: Timothy Konnert, 202–502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13730) in the docket number field to access the document. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19382 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12665–004]

New York Tidal Energy Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 30, 2010.

On May 12, 2010, New York Tidal Energy Company filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the East River Tidal Energy Pilot Project, located on the East River, in New York City, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 2-meter-diameter 20 kW capacity hydrokinetic device during Phase 1, which would be replaced by a 6-meter-diameter 200 kW device in Phase 2; (2) a 1,300-foot transmission cable that would interconnect with the existing Wards Island Park System; and (3) appurtenant facilities for operating and maintaining the project. Based on the proposed 250 hours of testing operation per-year, the project is estimated to have an annual generation of 5 megawatt-hours per-year, which would be sold to a local utility.

Applicant Contact: Daniel Power, Oceana Energy Company, 1785 Massachusetts Avenue, NW., Suite 100, Washington, DC 20036; *phone:* (202) 465–6405.

FERC Contact: Timothy Konnert, 202–502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment."

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12665) in the docket number field to access the document. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19380 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–475–000]

Wabash Gas Storage LLC; Notice of Application

July 30, 2010.

Take notice that on July 29, 2010, Wabash Gas Storage LLC (Petitioner), 1044 North 115th Street, Suite 400, Omaha, NE 68154–4446, filed in Docket No. CP10–475–000, a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, and section 7(c)(1)(B) of the Natural Gas Act (NGA), to perform specific temporary activity related to drill site preparation and the drilling of two stratigraphic test wells located in Edgar County, Illinois to determine the feasibility of redeveloping the currently abandoned Elbridge and Nevins storage facilities for natural gas storage, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Douglas B. Lauver, Vice President, Wabash Gas Storage LLC, 1044 North 115th Street, Suite 400, Omaha, NE 68154–4446, or by calling (402) 691–9711 (telephone) or (402) 691–9727 (fax), *dlauver@tenaska.com*, or to J. Patrick Nevins or Christopher A. Schindler, Hogan Lovells US LLP, Columbia Square, 555 13th Street, NW., Washington, DC 20004, or by calling (202) 637–6441 (telephone) or (202) 637–5910 (fax), *jpnevins@hoganlovells.com*.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: August 13, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19378 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 30, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1012–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Update List of Non-Conforming Service Agreements to be effective 8/29/2010.

Filed Date: 07/29/2010.

Accession Number: 20100729–5058.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 10, 2010.

Docket Numbers: RP10–1013–000.

Applicants: Mississippi Canyon Gas Pipeline, L.L.C.

Description: Mississippi Canyon Gas Pipeline, L.L.C. submits tariff filing per 154.203: MCGP Baseline Filing to be effective 8/31/2010.

Filed Date: 07/29/2010.

Accession Number: 20100729–5084.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 10, 2010.

Docket Numbers: RP10–1014–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.203: Sheet 579 (778) Compliance Filing to be effective 8/6/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5000.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Docket Numbers: RP10–1015–000.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline L.P. submits Fourth Revised Sheet No 11 to FERC Gas Tariff, Volume 1, to be effective 8/1/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5001.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Docket Numbers: RP10–1016–000.

Applicants: Midwestern Gas Transmission Company.

Description: Midwestern Gas Transmission Company submits tariff filing per 154.203: Non-Conforming Agreement—EDF to be effective 7/1/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5025.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Docket Numbers: RP10–1017–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Baseline Filing to be effective 7/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5032.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Docket Numbers: RP10–1018–000.

Applicants: Paiute Pipeline Company.

Description: Paiute Pipeline Company submits tariff filing per 154.203: Baseline to be effective 7/9/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5040.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Docket Numbers: RP10–1019–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.601: DTI—Volume No. 2 Contract Amendment to be effective 8/30/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5050.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Docket Numbers: RP10–1020–000.

Applicants: Great Lakes Gas Transmission Limited Partnership

Description: Great Lakes Gas Transmission Limited Partnership Semi-Annual Transporter's Use Report.

Filed Date: 07/30/2010.

Accession Number: 20100730–5068.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Docket Numbers: RP10–1021–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Gathering Affiliates to be effective 8/1/2010.

Filed Date: 07/30/2010.

Accession Number: 20100730–5069.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 11, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19377 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–116–000]

Trans Bay Cable, LLC; Notice of Institution of Section 206 Investigation and Refund Effective Date

July 30, 2010.

On July 29, 2010, the Commission issued an order that instituted an investigation in Docket No. ER10–116–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the justness and reasonableness of rates proposed by Trans Bay Cable, LLC (Trans Bay) in

Docket No. ER10–116–000. *Trans Bay Cable, LLC,* 132 FERC 61,083 (2010).

The refund effective date in Docket No. ER10–116–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**, or the date Trans Bay's rates in Docket No. ER10–116–000 become effective, whichever is later, but in the case of the latter, in no event later than 5 months from the date of publication of this notice.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–19379 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9185–6]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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 regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2333.02; Renewable Fuels Standard (RFS2); 40 CFR part 80, subpart M; was approved on 07/06/2010; OMB Number 2060–0640; expires on 07/31/2013; Approved without change.

EPA ICR Number 1715.12; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities (Opt-out and Recordkeeping Amendments Final Rule); 40 CFR part 745, subpart L; 40 CFR 745.225; was approved on 07/06/2010; OMB Number 2070–0155; expires on 10/31/2011; Approved without change.

EPA ICR Number 0597.10; Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients; 40 CFR part 180; was approved on 07/09/2010; OMB Number 2070–0024; expires on 07/31/2013; Approved without change.

EPA ICR Number 1632.03; Standards for Pesticide Containers and Containment; 40 CFR parts 156 and 165; was approved on 07/09/2010; OMB Number 2070–0133; expires on 07/31/2013; Approved without change.

EPA ICR Number 2379.01; Great Lakes Accountability System; was approved on 07/15/2010; OMB Number 2005–0001; expires on 07/31/2013; Approved with change.

EPA ICR Number 0278.10; Notice of Supplemental Distribution of a Registered Pesticide Product; 40 CFR 152.132; was approved on 07/15/2010; OMB Number 2070–0044; expires on 07/31/2013; Approved with change.

EPA ICR Number 2345.02; Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; 40 CFR parts 80, 85, 86, 94, 1027, 1033, 1039 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065 and 1068, was approved on 07/18/2010; OMB Number 2060–0641; expires on 07/31/2013; Approved with change.

EPA ICR Number 0877.10; RadNet (Renewal); was approved on 07/19/2010; OMB Number 2060–0015; expires on 07/31/2013; Approved without change.

EPA ICR Number 2366.01; Stormwater Management Including Discharges From Developed Sites Questionnaires; was approved on 07/22/2010; OMB Number 2040–0282; expires on 07/31/2013; Approved with change.

Dated: August 2, 2002.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2010–19425 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0497; FRL–8832–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Correction of Misreported Chemical Substances on the TSCA Inventory; EPA ICR No. 1741.06, OMB Control No. 2070–0145

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: "Correction of Misreported Chemical Substances on the TSCA Inventory" and identified by EPA ICR No. 1741.06 and OMB Control No. 2070–0145, is scheduled to expire on April 30, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before October 5, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0497, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0497. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0497. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Room 3334, EPA West Bldg., 1301 Constitution Ave., N.W., Washington, D.C. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Ron Carlson, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8631; fax number: (202) 564–7480; e-mail address: *carlson.ron@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this ICR are manufacturers or importers of chemical substances, mixtures, or categories listed on the Toxic Substances Control Act (TSCA) Inventory and regulated under TSCA section 8, who had reported to the initial effort to establish the TSCA Inventory in 1979, and who need to make a correction to that submission.

Title: Correction of Misreported Chemical Substances on the TSCA Inventory.

ICR numbers: EPA ICR No. 1741.06, OMB Control No. 2070–0145.

ICR status: This ICR is currently scheduled to expire on April 30, 2011. 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 Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(b) of TSCA requires EPA to compile and keep current an Inventory of Chemical Substances in Commerce, which is a listing of chemical substances manufactured, imported, and processed for commercial purposes in the United States. The purpose of the Inventory is to define, for the purpose of TSCA, what chemical substances exist in U.S. commerce. Since the Inventory thereby performs a regulatory function by distinguishing between existing chemicals and new chemicals, which TSCA regulates in different ways, it is imperative that the Inventory be accurate.

However, from time to time, EPA or respondents discover that substances have been incorrectly described by reporting companies. Reported substances have been unintentionally misidentified as a result of simple typographical errors, the misidentification of substances, or the lack of sufficient technical or analytical capabilities to characterize fully the exact chemical substances. EPA has developed guidelines (45 FR 50544, July 29, 1980) under which incorrectly described substances listed in the Inventory can be corrected. The

correction mechanism ensures the accuracy of the Inventory without imposing an unreasonable burden on the chemical industry. Without the Inventory correction mechanism, a company that submitted incorrect information would have to file a pre-manufacture notification (PMN) under TSCA section 5 to place the correct chemical substance on the Inventory whenever the previously reported substance is found to be misidentified. This would impose a much greater burden on both EPA and the submitter than the existing correction mechanism. This information collection applies to reporting and recordkeeping activities associated with the correction of misreported chemical substances found on the TSCA Inventory.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 9.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 20 hours.

Estimated total annual costs: $1,174. This includes an estimated burden cost of $1,174 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 30, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–19440 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8992–1]

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 07/26/2010 Through 07/30/2010 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 website 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. 20100283, Draft EIS, USFS, NM, Santa Fe National Forest Travel Management, Proposes to Provide for a System of Road, Trails, and Areas Designated for Motorized Use, Santa Fe, NM, Comment Period Ends: 09/30/2010, Contact: Julie Bain 505–438–5443.

EIS No. 20100284, Final EIS, USFS, MT, Lower West Fork Project, To Treat Units in and Adjacent to the Wildland-Urban-Interface (WUI) with Prescribed Fire, and Commercial and Pre-Commercial Thins, West Fork Ranger District, Bitterroot National Forest, Ravalli County, MT, Wait Period Ends: 09/07/2010, Contact: Dave M. Campbell 406–821–3269

EIS No. 20100285, Draft EIS, WAPA, SD, Groton Generation Station (GGS) Project, Proposes to Modify its Interconnection Agreement, Basin Electric Power Cooperative, for the (GGS) to Eliminate 50–Megawatts (MW) Annual Average Operating Limit, Brown County, SD, Comment Period Ends: 09/20/2010, Contact: Erika Walters 720–962–7279.

EIS No. 20100286, Draft EIS, FHWA, SC, Mark Clark Expressway Extension Project, Proposed Construction from the Interchange at I–526 and U.S. 17 to the James Island Connector, Charleston County, SC, Comment Period Ends: 09/30/2010, Contact: Patrick Tyndall 803–765–5460.

EIS No. 20100287, Final EIS, NPS, NY, Roosevelt-Vanderbilt National Historic Sites, General Management Plan, Implementation, Hyde Park, NY, Wait Period Ends: 09/07/2010, Contact: Marjorie Smith 339–223–0131.

EIS No. 20100288, Final EIS, BIA, OR, Cascade Locks Resort and Casino Project, Application for the Fee-to-Trust Transfer of 25 Acres of Land within the City of Cascade Locks, Confederated Tribes of the Warn Springs Reservation of Oregon, Cascade Locks, Hood River County, OR, Wait Period Ends: 09/07/2010, Contact: Scott Aikin 503–231–6883.

EIS No. 20100289, Draft EIS, USACE, CA, San Clemente Shoreline Protection Project, To Provide Shore Protection Through Nourishment of the Beach at the San Clemente Pier, San Clemente, CA, Comment Period Ends: 09/20/2010, Contact: Thomas W. Keeney 213–452–3875.

EIS No. 20100290, Final EIS, FHWA, MN, Trunk Highway 23 and US Highway 71 Project, Construction of One or More Grade-Separated Bridge Crossings, Dovre Township, Northeast of Wilmar County, Kandiyohi, MN, Wait Period Ends: 09/07/2010, Contact: Philip Forst 651–291–6110.

EIS No. 20100291, Draft EIS, USFS, CA, Sequoia National Forest Plan Amendment, Giant Sequoia National Monument, Comprehensive Management Plan, Implementation, CA, Comment Period Ends: 11/03/2010, Contact: Anne Thomas 559–784–1500 ext. 1164.

EIS No. 20100292, Final EIS, BLM, CA, Ivanpah Solar Electric Generating System (07–AFC–5) Project, Proposal to Construct a 400-m Megawatt Concentrated Solar Power Tower, Thermal-Electric Power Plant, San Bernardino County, CA, Wait Period Ends: 09/07/2010, Contact: Tom Hurshman 970–240–5345.

EIS No. 20100293, Final EIS, USN, CA, Marine Corps Base Camp Pendleton Basewide Utilities Infrastructure Construct and Operate Six Utility Infrastructure Project, San Diego County, CA, Wait Period Ends: 09/07/2010, Contact: Jesse Martinez 619–532–3844.

EIS No. 20100294, Final EIS, USN, FL, Renewal of Authorization to Use Pinecastle Range, New Information that was not Available in the 2002 FEIS, Continued Use of the Range for a 20 Year Period, Special Use Permit Issuance, Ocala National Forest, Marion and Lake Counties, FL, Wait Period Ends: 09/07/2010, Contact: Tom Currin 904–542–6301.

EIS No. 20100295, Final EIS, FHWA, OR, Sellwood Bridge Project, Rehabilitate or Replace the Bridge Crosses the Willamette River on Southeast Tacoma Street and Oregon State Highway 43, Funding, Multnomah County, OR, Wait Period Ends: 09/07/2010, Contact: Jeffrey Graham 503–587–4727.

EIS No. 20100296, Draft EIS, NOAA, 00, Columbia River Basin Hatchery Operations and the Funding of Mitchell Act Hatchery Program, To Authorize the Establishment, Operation and Maintenance of One or More Hatchery Facilities, OR, WA and ID, Comment Period Ends: 11/04/2010, Contact: Allyson Purcell 503–736–4736.

EIS No. 20100297, Final EIS, NRC, NE, Generic—License Renewal of Nuclear Plants, Regarding Cooper Nuclear Station, Unit 1, Supplement 41 to NUREG–1437, Nemaha County, NE, Wait Period Ends: 09/07/2010, Contact: Bennett M. Brady 301–415–2981.

EIS No. 20100298, Final EIS, USFS, WV, Allegheny Wood Product Easement, Proposes to Convey an Easement of Right-of-Way along the Railroad Grade located in the Blackwater Canyon Area, Monongahela National Forest, Tucker County, WV, Wait Period Ends: 09/07/2010, Contact: David Ede 304–636–1800 Ext 233.

EIS No. 20100299, Draft EIS, FERC, CA, McCloud-Pit Hydroelectric Project, (Project No. 2106) Application to Relicense its 368-Megawatt (MW), McCloud and Pit Rivers, Shasta County, CA, Comment Period Ends: 09/28/2010, Contact: Mary O'Driscoll 1–866–208–3372.

EIS No. 20100300, Draft EIS, BIA, CA, Cloverdale Rancheria of Pomo Indians (Tribe) Fee-to-Trust and Resort Casino Project, Taking Six Parcels into Federal Trust, Implementation, Sonoma County, CA, Comment Period Ends: 10/20/2010, Contact: John Rydzik 916–978–6051.

EIS No. 20100301, Final EIS, BIA, CA, Enterprise Rancheria Gaming Facility and Hotel Fee-To-Trust Acquisition Project, Implementation, Federal Trust, Estom Yumeka Maida Tribe, Yuba County, CA, Wait Period Ends: 09/07/2010, Contact: John Rydzik 916–978–6051.

EIS No. 20100302, Final EIS, BIA, CA, North Fork Rancheria of Mono Indians Fee-to-Trust and Casino/Hotel Project, Proposed 305-Acres-Fee-to-Trust Land Acquisition in Unincorporated Madera County, CA, Wait Period Ends: 09/07/2010, Contact: John Rydzik 916–978–6051.

EIS No. 20100303, Final EIS, BLM, CA, Calico Solar Project, Proposed Solar Thermal Electricity Generation Facility Located Public Lands, Construction and Operation, Right-of-Way Grant, San Bernardino County, CA, Wait Period Ends: 09/07/2010, Contact: Jim Stobaugh 775–861–6478.

Amended Notices

EIS No. 20100259, Draft EIS, FAA, RI, Theodore Francis Green Airport Improvement Program, Proposing Improvements to Enhance Safety and the Efficiency of the Airport and the New England Regional Airport System, City of Warwick, Kent County, RI, Comment Period Ends: 09/15/2010, Contact: Richard Doucette 781–238–7613.

Revision to FR Notice Published 07/26/2010: Extending Comment Period from 08/30/2010 to 9/15/2010.

EIS No. 20100274, Draft EIS, BLM, UT, VOIDED—Kerr-McGee Oil & Gas Onshore LP (KMG), Proposes to Conduit Infill Drilling to Develop the Hydrocarbon Resources Oil and Gas Leases, Application for Permit to Drill and Approval Right-of-Way Grants, Uintah County, UT, Comment Period Ends: 09/13/2010, Contact: Stephanie Howard 435–781–4400.

Revision to FR Notice Published 07/30/2010: The above DEIS was inadvertently published in 07/30/2010. The Official Filing was Published in FR on 07/16/2010 CEQ# 20100253.

Dated: August 3, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–19430 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0255; FRL–8412–4]

Final Test Guideline; Product Performance of Skin-applied Insect Repellents of Insect and Other Arthropods (OPPTS Test Guideline No. 810.3700); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of the final test guideline for Product Performance of Skin-applied Insect Repellents of Insect and Other Arthropods Test Guidelines (OPPTS Test Guideline No. 810.3700).

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Melissa Chun, Regulatory Coordination Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1605; e-mail address: *chun.melissa@epa.gov*.

For technical information contact: Clara Fuentes, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0171; e-mail address: *fuentes.clara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

This test guideline is part of a series of test guidelines (referred to hereinafter as the harmonized test guidelines) established by the Office of Chemical Safety and Pollution Prevention (OCSPP) (formerly the Office of

Prevention, Pesticides and Toxic Substances (OPPTS) prior to April 22, 2010) for use in testing pesticides and chemical substances to develop data for submission to the Agency under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*), and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a).

The harmonized test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA. The harmonized test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and the companies that are subject to data submission requirements under TSCA, FIFRA, and/or the FFDCA.

As guidance documents, the harmonized test guidelines are not binding on either EPA or any outside parties, and EPA may depart from the harmonized test guidelines where circumstances warrant and without prior notice. The procedures contained in the harmonized test guidelines are recommended for generating the data that are the subject of the harmonized test guidelines, but EPA recognizes that departures may be appropriate in specific situations. You may propose alternatives to the recommendations described in the harmonized test guidelines, and the Agency will assess them for appropriateness on a case-by-case basis.

II. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of pesticides and chemical substances for submission to EPA under TSCA, FIFRA, and/or FFDCA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket for this document.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP-2009–0255. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access to the harmonized test guidelines.* To access the harmonized test guidelines electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines." You may also access the harmonized test guidelines in *http://www.regulations.gov* grouped by series under docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159, and EPA–HQ–OPPT–2009–0576.

III. Overview

A. What Action is EPA Taking?

EPA is announcing the availability of a final harmonized test guideline under OPPTS Series 810, entitled "Product Performance of Skin-applied Insect Repellents of Insects and Other Arthropods" (OPPTS Test Guideline No. 810.3700). The updated harmonized test guideline recommends methods for conducting product performance testing of topically applied repellents of insects and other arthropods. As a guideline, it does not impose mandatory requirements. It does, however, reflect the Agency's consideration of recommendations for steps necessary to develop reliable data on performance of skin-applied arthropod repellent products, and recommends procedures to follow when human subjects are involved. The section of the existing 1999 draft OPPTS Test Guideline No. 810.3700 applying to repellents for use in outdoor premises will remain in effect.

EPA will continue to consider refinements and new test methods as they become available. In addition, the Agency will add recommended test methods for other types of arthropod repellents such as those impregnated into clothing or other fabrics or for repelling insect pests in outdoor spaces. These additional guidelines will be published for public comment at a later time.

Studies conducted according to these harmonized test guidelines may be used to address data requirements for pesticide registrations defined at 40 CFR 158.400, 158.2070, and 158.2160. These harmonized test guidelines may also be useful for satisfying FIFRA data requirements for data call-ins issued under the authority of FIFRA section 3(c)(2)(B).

B. How Were These Harmonized Test Guidelines Developed?

The Agency has been working to revise this Product Performance Test Guideline since it was published as a "public draft" in December 1999. EPA held a meeting of the FIFRA Scientific Advisory Panel (SAP) on the revised draft guideline in April 2000. Revised drafts addressing only repellents for topical application to human skin were presented to the Human Studies Review Board (HRSB) in June 2006 and in October 2008. The HSRB has reviewed and commented on numerous protocols for insect repellent efficacy studies and reports of completed studies. Over the course of these reviews the HSRB has made suggestions for further strengthening the scientific and ethical conduct of this kind of research; these have been incorporated into the updated harmonized test guideline. A response-to-comments document has been placed in the docket showing how the recommendations of the advisory committees have been reflected in the harmonized test guideline.

The Agency also convened a public meeting, that was announced in the **Federal Register** of June 13, 2007 (72 FR 32647) (FRL–8135–9), of national experts in which the revisions made in June 2006, were discussed. The public meeting, "Workshop for Sharing Technical Information on Updated Methods for Testing Efficacy of Skin-Applied Insect Repellents," involved leading scientists from the public and private sectors who conduct this type of research.

As a result of these various consultations and public comment opportunities, EPA has revised its topical insect repellent efficacy test guideline in response to the helpful suggestions from the various scientific and ethics experts and comments received from the public.

This updated harmonized test guideline contains new sections addressing ethical considerations affecting the design and conduct of repellent studies when human subjects are involved. Any research conducted under this harmonized test guideline is covered by the requirements of EPA's regulations for the protection of human subjects of research set out at 40 CFR part 26, subparts K, L, and M. Persons conducting and submitting topical repellent efficacy studies should ensure compliance with all applicable requirements of that rule.

EPA has also expanded and revised the sections dealing with scientific aspects of this kind of study. This harmonized test guideline provides specific recommendations for the design and execution of studies to evaluate the performance of pesticide products intended to repel insects and other arthropods in connection with the products' registration under FIFRA. This harmonized test guideline applies to products in any formulation—such as lotion, liquid, or spray—intended to be applied directly to human skin. It does not apply to products applied to or impregnated in clothing or fabric, or used to repel insects from indoor or outdoor spaces. This harmonized test guideline recommends appropriate study designs and methods for selecting subjects, statistical analysis, and reporting.

EPA recognizes that the World Health Organization (WHO) has also published guidelines for testing efficacy of skin-applied mosquito repellents. The purpose of the WHO guidelines is to provide procedures and criteria for efficacy testing of mosquito repellents applied to human skin. EPA's harmonized test guidelines coincide with the WHO guidelines in providing guidance for laboratory and field tests. Both guidelines recommend field testing, monitoring test sites, and establishing criteria for acceptable landing pressure. EPA considered the WHO guidelines during the development of its own guidelines.

List of Subjects

Environmental protection, Chemical testing, Harmonized test guidelines, Pesticides and pests.

Dated: July 28, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–19427 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2010–0661; FRL–9185–9]

Board of Scientific Counselors, Executive Committee Meeting—August 2010

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a public meeting (via conference call) of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The conference call will be held on Wednesday, August 25, 2010, from 1 p.m. to 3 p.m. eastern time and may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: Participation in the conference call will be by telephone only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Greg Susanke, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0661, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2010–0661.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2010–0661.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—February 2010 Docket, Mailcode: 2822T, 1301 Constitution Avenue., NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2010–0661.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2010–0661. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0661. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Executive Committee Meeting—August 2010 Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Greg Susanke, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–9945; via fax at: (202) 565–2911; or via e-mail at: *susanke.greg@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Greg Susanke, the

Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: BOSC Executive Committee finalization of responses to ORD Mid-Cycle Progress Reports on the Human Health Risk Assessment and Safe Pesticides/Safe Products Research Programs, and the ORD Nanomaterial Workshop Summary. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Greg Susanke (202) 564–9945 or *susanke.greg@epa.gov.* To request accommodation of a disability, please contact Greg Susanke, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 29, 2010.

M. Dannel,

Acting Director, Office of Science Policy.

[FR Doc. 2010–19428 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9185–8]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference on August 25, 2010 of the Clean Air Scientific Advisory Committee Particulate Matter Review Panel (Panel) to discuss its draft letter on the *Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards—Second External Review Draft* (June 2010).

DATES: The teleconference will be held on August 25, 2010 from 10 a.m. to 1 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2073; fax (202) 565–2098; or e-mail at *stallworth.holly@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App 2. The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including particulate matter (PM). EPA conducts scientific and policy assessments related to both primary (health-based) and secondary (welfare-based) standards for each of these pollutants. As part of that process, the CASAC Particulate Matter Review Panel has been reviewing a series of EPA's assessments that provide the basis for EPA rulemaking on particulate matter.

At the August 25, 2010 teleconference, the CASAC Particulate Matter Review Panel will discuss its draft letter on the review of EPA's *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards—Second External Review Draft* (June 2010). Background information on previous meetings and teleconferences of the CASAC Particulate Matter Review Panel may be found in 72 FR 63177–63178 (November 8, 2007), 74 FR 7688–7689 (February 19, 2009), 74 FR 46586–46587 (September 10, 2009), 75 FR 8062–8063 (February 23, 2010), 75 FR19971 (April 16, 2010) and 75 FR 32763–32764 (June 9, 2010).

Technical Contacts: Any questions concerning *Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards—Second External Review Draft* (June 2010) should be directed to Ms. Beth Hassett-Sipple, OAR, at *hassett-sipple.beth@epa.gov* or 919–541–4605.

Availability of Meeting Materials: All meeting materials (agenda, public comments, draft letter to the Administrator) for the August 25, 2010 teleconference will be placed on the CASAC Web site. To find the web page for this meeting, go to the CASAC web page at *http://www.epa.gov/casac* and click on the calendar link on the blue navigational bar on the left hand side.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker. To be placed on the public speaker list for the August 25, 2010 teleconference, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than August 20, 2010. *Written Statements:* Written statements for the August 25, 2010 teleconference should be received in the SAB Staff Office by August 20, 2010, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements should be supplied to the DFO (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: August 2, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–19415 Filed 8–5–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: 1TV.COM, INC., Station KBSZ, Facility ID 11217, BP–20100429ADM, From WICKENBURG, AZ, To APACHE JUNCTION, AZ; CEDAR COVE BROADCASTING, INC., Station KADE, Facility ID 173616, BMPED–20100707GWD, From SALIDA, CO, To SNOWMASS VILLAGE, CO; DELTA MEDIA CORPORATION, Station KLWB–FM, Facility ID 183335, BPH–20100624AHQ, From OPELOUSAS, LA, To CARENCRO, LA; EDUCATIONAL MEDIA FOUNDATION, Station WQKV, Facility ID 89586, BPED–20100622ADM, From ROCHESTER, IN, To WARSAW, IN; MUNBILLA BROADCASTING PROPERTIES, LTD., Station KHHG, Facility ID 170991, BPH–20100625AZQ, From HAMILTON, TX, To EVANT, TX; WILLIAM S. KONOPNICKI, Station KNKI, Facility ID 78413, BPH–20100609AGX, From PINETOP, AZ, To TONTO BASIN, AZ.

DATES: Comments may be filed through October 5, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2010–19457 Filed 8–5–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation website at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: August 2, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10271	Bayside Savings Bank	Port Sainte Joe	FL	7/30/2010
10272	Coastal Community Bank	Panama City Beach	FL	7/30/2010
10273	Liberty Bank	Eugene	OR	7/30/2010
10274	NorthWest Bank & Trust	Acworth	GA	7/30/2010
10275	The Cowlitz Bank	Longview	WA	7/30/2010

[FR Doc. 2010–19410 Filed 8–5–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Betty J. Bradshaw 2000 Irrevocable Trust dated 10/30/00–Charles M. Shea, Trustee, Chicago, Illinois; to acquire control of First Community Bancshares Corp., Anamosa, Iowa, and thereby indirectly acquire control of First Community Bank, Milton, Wisconsin.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Cecil R. Simmons, individually; and as a member of a group including Leonard P. Simmons, all of San Benito, Texas; Anita Simmons Boswell,

Harlingen, Texas, and Michael Scott, Raymondville, Texas (the "Director Group"); Cecil R. Simmons and Juana Simmons, San Benito, Texas; Anita Simmons Boswell, Harlingen, Texas; Sarah Simmons Hays, Evergreen, Colorado; and Dolores Simmons, San Benito, Texas (the "Cecil Simmons Family Group"); and Leonard P. Simmons and Mary Beth Simmons, San Benito, Texas; Delores M. Simmons, San Benito, Texas; Ricardo Leal, Harlingen, Texas; Audrey Simmons Hooks, Austin, Texas; Samuel Simmons and Ernest Nash, III, both of Harlingen, Texas (the "Leonard Simmons Family Group"), each as a group acting in concert to acquire control of First San Benito Bancshares Corporation, and thereby indirectly acquire control of First Community Bank, National Association, both of San Benito, Texas.

2. James William Collins, as trustee of the Vanco Trusts and the Vannie Cook Trusts, the Vanco Trusts, and the Vannie Cook Trusts, all of McAllen, Texas; Rafael G. Garza, Hugo Del Pozzo, Bravo Equity Partners II, L.P., Bravo Equity, LP, and RGG Capital, LLC, all of Fort Worth, Texas; and Jennifer Stone and Tyler Stone, both of Dallas, Texas, together as a group acting in concert, to acquire control of Family Bancorp, Inc., San Antonio, Texas, and thereby indirectly acquire control of San Antonio National Bank, Refugio, Texas.

Board of Governors of the Federal Reserve System, August 3, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–19437 Filed 8–5–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Western Investment Group, LLC and Western Bancshares, Inc., both of Curtis, Nebraska; to become bank holding companies by acquiring 100 percent of the voting shares of Curtis Bancorporation, Inc., and thereby indirectly acquiring Curtis State Bank, both of Curtis, Nebraska.

Board of Governors of the Federal Reserve System, August 3, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–19438 Filed 8–5–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

[Docket No. 10–08]

Bimsha International v. Chief Cargo Services, Inc., and Kaiser Apparel, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Bimsha International, hereinafter "Complainant," against Chief Cargo Services, Inc., and Kaiser Apparel, Inc., hereinafter "Respondents." Complainant asserts that it is located in Pakistan and in the business of manufacturing garments. Complainant asserts that Respondents are "New York State Corporations doing business in New York State and elsewhere, performing freight forwarding and cargo handling services paying freight charges, paying import duties and performing U.S. Customs clearance services for its customers."

Complainant alleges that three transactions occurred between Complainant and Respondent and that "Respondents fraudulently, unlawfully and wrongfully released the shipments without obtaining the negotiable Bills of Lading and remitting payment for the shipments as required by the Shipping Act and the Bill of Lading Act." As a result, Complainant alleges that Respondents violated: "U.S. Code Title 46 Sec. 1(a), Sec. 30701(4), 30701(6), 30701(7), 30701(8), Sec. 41102(b), 41102(c) (Shipping Act Sec. 10(a)(1) and 10(d)(1)), 41301 (Sec. 11(a) of the Shipping Act), 41302, 41303, 41304, 41305, 41309, 305; U.S. Code 49 Sec. 80101, 80102, 80103, 80104, 80110, 80111, 80116, 80106."

Complainant requests that the Commission "investigate the matter"; that Respondents be required to answer the charges made by Complainant; that Respondents be ordered to pay reparations of $207,809.74 with interest and attorney's fees; and order any such other and further relief as the Commission deems just and proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 2, 2011 and the final decision of the Commission shall be issued by November 30, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–19374 Filed 8–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nomination for Appointment to the Advisory Committee on Minority Health; Correction

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice: Correction.

SUMMARY: The Department of Health and Human Services published a document in the **Federal Register** on Thursday, July 22, 2010 soliciting nominations for appointment to the Advisory Committee on Minority Health. Within the **FOR FURTHER INFORMATION CONTACT** section, there was a typographical error in the Web site address managed by the Office of Minority Health.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Baltimore, (240) 453–2882.

Correction

In the **Federal Register** of July 22, 2010, Vol. 75, No. 140, page 42754, in the second column, correct the **FOR FURTHER INFORMATION CONTACT** section to read: Ms. Monica Baltimore, Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852; *Telephone:* (240) 453–2882. A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. Baltimore or by accessing the Web site managed by OMH at *http://www.minorityhealth.hhs.gov/acmh.*

Dated: July 28, 2010.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 2010–19409 Filed 8–5–10; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10GI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluating Act Against AIDS Social Marketing Campaign Phases Targeting Consumers—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In response to the continued HIV epidemic in our country, CDC has launched Act Against AIDS, a 5-year, multifaceted communication campaign to reduce HIV incidence in the United States. CDC plans to release the campaign in phases, with some of the phases running concurrently. Each phase of the campaign will use mass media and direct-to-consumer channels to deliver HIV prevention and testing messages. Some components of the campaign will be designed to provide basic education and increase awareness of HIV/AIDS among the general public, and others will be targeted to specific subgroups or communities at greatest risk of infection. The current study addresses the need to assess the effectiveness of these social marketing messages aimed at increasing HIV awareness and delivering HIV prevention and testing messages among at-risk populations.

This study will evaluate the Act Against AIDS (AAA) social marketing campaign aimed at increasing HIV/AIDS awareness, increasing prevention behaviors, and improving HIV testing rates among consumers. The study will consist of a quarterly tracking survey of AAA target audiences to measure exposure to each phase of the campaign and interventions implemented under AAA. Each extended survey will have a core set of items asked in all rounds, as well as a module of questions relating to specific AAA activities and communication initiatives that are occurring during a given quarter. Each extended survey sample will consist of 1,000 respondents selected from a combination of sources, including a national opt-in e-mail list sample and respondent lists generated by partnership organizations (*e.g.,* the National Urban League, the National Medical Association). Participants will self-administer the extended survey at home on personal computers. The research will include 12 data collections over a 3-year period: Four self-administered quarterly extended surveys per year over 3 years, with a total of 12,000 respondents. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Data collection type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Individuals (male and female) aged 18 years and older	Study Screener	20,000	1	2/60	667
Individuals (male and female) aged 18 years and older	Extended survey ..	4,000	1	30/60	2,000
Total	.....	.....	.....	.....	2,667

Dated: August 2, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–19396 Filed 8–5–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0380]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Food and Drug Administration Rapid Response Surveys

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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the use of rapid response surveys to obtain data on safety information to support quick-turnaround decisionmaking about potential safety problems or risk management solutions from health care professionals, hospitals and other user-facilities (e.g., nursing homes, etc.); consumers; manufacturers of biologics, drugs, and medical devices; distributors; and importers when FDA must quickly determine whether or not a problem with a biologic, drug, or medical device impacts the public health.

DATES: Submit either electronic or written comments on the collection of information by October 5, 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: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov*.

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, including each proposed extension of an existing 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.

Generic Food and Drug Administration Rapid Response Surveys—(OMB Control Number 0910–0500)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. Under section 519 of the act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA; to require user facilities to report device-related deaths directly to FDA and to manufacturers; and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process. FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions. Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA Forms 3500 and 3500A (OMB control number 0910–0291) and the vaccine adverse event reporting system. FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities. FDA will use the information gathered from these surveys to obtain quickly vital information about medical product risks and interventions to reduce risks so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	30	6,000	.5	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA projects 30 emergency risk related surveys per year with a sample of between 50 and 200 respondents per survey. FDA also projects a response time of 0.5 hours per response. These estimates are based on the maximum sample size per questionnaire that FDA can analyze in a timely manner. The annual frequency of response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while other respondents may be contacted several times annually, depending on the human drug, biologic, or medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, it will take 0.5 hours for a respondent to gather the requested information and fill in the answers.

Dated: August 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19357 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0084]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Pretesting of Tobacco Communications

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 September 7, 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–NEW and the title "Pretesting of Tobacco Communications." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *JonnaLynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Pretesting of Tobacco Communications—0910–NEW

In order to conduct educational and public information programs relating to tobacco use, as authorized by section 1003(d)(2)(D) of the Federal Food Drug and Cosmetic Act (21 U.S.C. section 393) and to develop effective tobacco-related communications as authorized by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), FDA must conduct research and studies relating to the control and prevention of disease (also authorized by section 301 of the Public Health Service Act (42 U.S.C 241(a)). In conducting such research, FDA will employ formative pretests to assess the likely effectiveness of tobacco communications with specific target audiences. The information collected will serve two major purposes. First, formative research will provide critical knowledge about target audiences such as adolescents, adults, health care professionals, and tobacco retailers. FDA must first understand critical influences on people's decisionmaking process when choosing to use, not use, or quit using tobacco products. In addition to understanding the decisionmaking processes of adults, it is also critical to understand the decisionmaking processes among adolescents (ages 13 to 17), where communications will aim to discourage tobacco use before it starts. FDA must also understand the general beliefs of retailers in the tobacco product supply chain. Retailers play a key role in the success of tobacco control as they are directly impacted by many of the regulations FDA will issue under the Tobacco Control Act. FDA must determine retailers' informational needs and the most effective communication channels and formats for reaching and educating them about new regulations. This knowledge will allow FDA to engage retailers as partners in tobacco control by better equipping them with the tools needed to comply with these regulations. FDA will apply knowledge of these decisionmaking processes to design effective communication strategies and messages. Second, initial testing will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Pretesting messages with a sample of the target audience will allow FDA to refine messages while they are still in the developmental stage. By utilizing appropriate qualitative and quantitative methodologies, FDA will be able to: (1) Better understand characteristics of the target audience—its attitudes, beliefs, and behaviors—and use these in the development of effective risk communications; (2) more efficiently and effectively design messages and select formats that have the greatest potential to influence the target audience's attitudes and behavior in a favorable way; (3) determine the best promotion and distribution channels to reach the target audience with appropriate messages; and (4) expend limited program resource dollars wisely and effectively.

In the **Federal Register** of March 1, 2010 (75 FR 9225), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received comments from four public entities, including two corporations, one nonprofit organization, and one city health department. Comments supported FDA taking a science-based approach to its communication activities. None of the comments objected to the estimated annual reporting burden or questioned

the practical utility of the information to be collected.

FDA acknowledges one request for additional details on the information to be collected and the planned research methodology, but notes that its notice asked for comment on FDA's request for a generic clearance to collect information related to the formative pretesting of tobacco communication messages. Under this generic clearance, details of individual studies will be tailored to specific communications-related questions. For each study FDA would request under this clearance, FDA will provide OMB with details on the information collection (e.g., research question(s), methodology). The communication development process will inform the purpose of the data collection and hence its methodology. For very early message development, qualitative research such as focus groups or in-depth interviews will be appropriate. At later communications development stages, qualitative as well as more quantitative data collection may be needed.

One comment noted that FDA separately requested comment on a specific study of the efficacy of graphic cigarette warning labels (Docket No. FDA–2010–N–0079). In response to this comment, and to avoid apparent duplication of effort, FDA agrees that it will not conduct any pretesting of tobacco warning labels under this proposed generic clearance. Further, FDA will not use studies conducted under this generic clearance to make regulatory policy or enforcement decisions. However, FDA may conduct research under this generic clearance concerning the development of informational campaigns that FDA may undertake to explain changes to, and the implications of, tobacco product warning label regulations.

After careful consideration, FDA determined that a comment suggesting limiting pretesting to adults to minimize the burden of information collections on the public would reduce the utility of study results. This suggestion goes against commonly accepted communication practice, and the advice of FDA's Risk Communication Advisory Committee, to target intended audiences with messages tailored to their specific needs. Segmenting pretesting by audience will produce results that will better inform FDA's development of messages relevant to intended audiences' specific needs, beliefs, and attitudes. A major objective of FDA tobacco communications will be to discourage tobacco use by adolescents before they start. Therefore, it is critical that FDA understand the decisionmaking processes among 13 to 17 year olds. Also, the suggestion to eliminate the pretesting of messages delivered across multiple platforms (e.g., television, print, radio) ignores a fundamental research goal of matching appropriate messages with effective distribution channels. Limiting pretesting in this way would leave FDA basing its communication activities on assumptions rather than science-based research.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Respondents	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Adolescents 13 to 17, adults 18+, health care professionals, tobacco retailers	16,448	1	16,448	0.1739	2,860
Total	16,448				2,860

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19356 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0199]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Administrative Procedures for the Clinical Laboratory Improvement Amendments of 1988 Categorization

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 September 7, 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 0910–0607. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Administrative Procedures for the Clinical Laboratory Improvement Amendments of 1988 Categorization—(OMB Control Number 0910–0607; Extension)

A guidance document entitled "Guidance for Administrative Procedures for CLIA Categorization" was released on May 7, 2008. The document describes procedures FDA will use to assign the complexity category to a device. Typically, FDA assigns complexity categorizations to devices at the time of clearance or approval of the device. In this way, no additional burden is incurred by the manufacturer since the labeling (including operating instructions) is included in the 510(k) or Premarket Application. In some cases, however, a manufacturer may request CLIA categorization even if FDA is not

simultaneously reviewing a 510(k) or PMA. One example is when a manufacturer requests that FDA assign CLIA categorization to a previously cleared device that has changed names since the original CLIA categorization. Another example is when a device is exempt from premarket review. In such cases, the guidance recommends that manufacturers provide FDA with a copy of the package insert for the device and a cover letter indicating why the manufacturer is requesting a categorization (e.g. name change, exempt from 510(k) review). The guidance recommends that in the correspondence to FDA the manufacturer should identify the product code and classification as well as reference to the original 510(k) when this is available. The number of respondents is approximately 60. On average, each respondent will request categorizations (independent of a 510(k) or PMA) 15 times per year. The cost, not including personnel, is estimated at $52 per hour (52 x 900) totaling $46,800. This includes the cost of copying and mailing copies of package inserts and a cover letter, which includes a statement of the reason for the request and reference to the original 510(k) numbers, including regulation numbers and product codes. The burden hours are based on FDA familiarity with the types of documentation typically included in a sponsor's categorization requests, and costs for basic office supplies (e.g. paper). The costs have been updated based on the Bureau of Labor Statistics estimates of inflation.

In the **Federal Register** of May 4, 2010 (75 FR 23781), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

42 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Responses	Total Hours	Total Operating & Maintenance Costs
42 CFR 493.17	60	15	900	1	900	$46,800

[1] There are no capital costs associated with this collection of information.

Dated: August 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19358 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0394]

Clinical Studies of Safety and Effectiveness of Orphan Products Research Project Grant (R01)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of FDA's Office of Orphan Products Development (OPD) grant program. The goal of FDA's OPD grant program is to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the proposed product will be superior to the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these products. Applicants must include in the application's Background and Significance section documentation to support the estimated prevalence of the orphan disease or condition (or in the case of a vaccine or diagnostic, information to support the estimates of how many people will be administered the diagnostic or vaccine annually) and an explanation of how the proposed study will either help support product approval or provide essential data needed for product development.

DATES: Important dates are as follows:

1. The application due dates are February 2, 2011; February 1, 2012. The resubmission due dates are October 14, 2011; October 15, 2012.
2. The anticipated start dates are November 2010; November 2012.
3. The opening date is December 2, 2010.
4. The expiration date is February 2, 2012; October 16, 2012 (resubmission).

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

Katherine Needleman, Orphan Products Grants Program, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5271, Silver Spring, MD 20993–0002, 301–796–8660, e-mail: *katherine.needleman@fda.hhs.gov.*

Vieda Hubbard, Division of Acquisition Support and Grants, Office of Acquisitions & Grant Services, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7177, e-mail: *vieda.hubbard@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://grants.nih.gov/grants/guide* (select the "Request for Applications" link), *http://www.grants.gov* (see "For Applicants" section), and *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/WhomtoContactaboutOrphanProductDevelopment/ucm134580.htm.*[1]

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–11–001
93.103

A. Background

The OPD was created to identify and promote the development of orphan products. Orphan products are drugs, biologics, medical devices, and medical foods that are indicated for a rare disease or condition (that is, one with prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostics and vaccines will qualify for orphan status only if the U.S. population to whom they will be administered is fewer than 200,000 people per year.

B. Research Objectives

The goal of FDA's OPD grant program is to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the proposed product will be superior to the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these

[1] FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

products. Applicants must include in the application's Background and Significance section documentation to support the estimated prevalence of the orphan disease or condition (or in the case of a vaccine or diagnostic, information to support the estimates of how many people will be administered the diagnostic or vaccine annually) and an explanation of how the proposed study will either help support product approval or provide essential data needed for product development.

C. Eligibility Information

The grants are available to any foreign or domestic, public or private, for-profit or nonprofit entity (including State and local units of government). Federal agencies that are not part of the Department of Health and Human Services (HHS) may apply. Agencies that are part of HHS may not apply. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1968, are not eligible to receive grant awards.

II. Award Information/Funds Available

A. Award Amount

Of the estimated fiscal year (FY) 2012 funding ($14.1 million), approximately $10 million will fund noncompeting continuation awards, and approximately $4.1 million will fund 5 to 10 new awards, subject to availability of funds. It is anticipated that funding for the number of noncompeting continuation awards and new awards in FY 2013 will be similar to FY 2012. Phase 1 studies are eligible for grants of up to $200,000 per year for up to 3 years. Phase 2 and 3 studies are eligible for grants of up to $400,000 per year for up to 4 years. Please note that the dollar limitation will apply to total costs (direct plus indirect). Budgets for each year of requested support may not exceed the $200,000 or $400,000 total cost limit, whichever is applicable.

B. Length of Support

The length of support will depend on the nature of the study. For those studies with an expected duration of more than 1 year, a second, third, or fourth year of noncompetitive continuation of support will depend on the following factors: (1) Performance during the preceding year; (2) compliance with regulatory requirements of IND/investigational device exemption (IDE); and (3) availability of Federal funds.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at *http://grants.nih.gov/grants/guide*. For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With Central Contractor Registration
- Step 3: Obtain Username and Password
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*. After you have followed these steps, submit electronic applications to: *http://www.grants.gov*.

Dated: July 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19354 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0395]

Draft Guidance for Industry and Food and Drug Administration Staff; Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Draft Guidance for Industry and FDA Staff; Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays." This draft guidance document discusses information to be included in premarket notifications for lamotrigine or zonisamide assays. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 4, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Avis Danishefsky, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5620, Silver Spring, MD 20993–0002, 301–796–6142.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this draft guidance document to describe its current thinking concerning issues that should be addressed in premarket notifications for assays intended to quantitate the anti-seizure drugs lamotrigine and zonisamide in serum. The Therapeutic Drug Monitoring (TDM) Roundtable of the American Association of Clinical Chemists (AACC) submitted to FDA recommendations for lamotrigine assays. Many of the recommendations in this draft guidance document are consistent with the AACC TDM Roundtable recommendations. Some of the general concepts in this guidance may also be helpful in preparing 510(k) submissions for other therapeutic drug assays previously cleared by FDA and classified within 21 CFR part 862, subpart D.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on therapeutic drug assays that measure lamotrigine or zonisamide. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive "Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1654 to identify the guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR 809.10 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 2, 2010.

Nancy Stade,

Acting Associate Director for Regulations and Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–19419 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0495]

Draft Guidance for Industry and Food and Drug Administration Staff; Medical Devices; Neurological and Physical Medicine Device Guidance Document; Reopening of Comment Period; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 28, 2010 (75 FR 44267). The document reopened the comment period for a notice of availability of draft guidance documents for 11 neurological and physical medicine devices. The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208, Silver Spring, MD 20993, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–18406, appearing on page 44267, in the **Federal Register** of Wednesday, July 28, 2010, the following correction is made:

1. On page 44267, in the first column, the heading "[Docket No. FDA–2009–N–0495]" is corrected to read "[Docket No. FDA–2009–D–0495]".

Dated: July 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19355 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2003–D–0243] (formerly 2003D–0571)

Guidance for Industry on Drug Substance Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry #169 entitled "Drug Substance Chemistry, Manufacturing, and Controls Information." This guidance provides recommendations on the chemistry, manufacturing, and controls (CMC) information for drug substances that should be submitted to support original new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs). The guidance is structured to facilitate the preparation of applications submitted in Common Technical Document (CTD) format.

DATES: Submit either electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Alem Ghiorghis, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8266, email: *alem.ghiorghis@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 1, 2006 (71 FR 31194), FDA published the notice of withdrawal and revision of seven guidances. CVM made Level II revisions to draft guidance entitled "Drug Substance Chemistry, Manufacturing, and Controls

Information" to support their continued use in CVM for the approval of new animal drugs (e.g., removed references to human drug and biological products). The guidance announced in this notice finalizes the draft guidance dated June 1, 2006.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) have been approved under OMB Control No. 0910–0032.

IV. Comments

Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov*.

Dated: July 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19360 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 21, 2010, from 2 p.m. to approximately 6 p.m.

Location: National Institutes of Health (NIH), Building 29B/Conference Room C. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 21, 2010, the committee will meet in open session to hear updates of the research programs in the Laboratory of Respiratory & Special Pathogens, Division of Bacterial, Parasitic, & Allergenic Products; Laboratory of Hepatitis Viruses, and Laboratory of Vector Borne Virus Diseases, Division of Viral Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On September 21, 2010, from 2 p.m. to approximately 5:10 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 15, 2010. Oral presentations from the public will be scheduled between approximately 4:10 p.m. and 5:10 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 9, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session,

FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 10, 2010.

Closed Committee Deliberations: On September 21, 2010, from approximately 5:10 p.m. to approximately 6 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Dated: August 3, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–19462 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee scheduled for August 26, 2010, is postponed. The meeting was announced in the **Federal Register** of June 24, 2010 (75 FR 36102). The meeting is postponed so that FDA can review and consider additional information that was submitted. A future meeting date will be announced in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Margaret McCabe-Janicki, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., rm. 1535, Silver Spring, MD 20993–0002, 301–796–7029 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512519. Please call the Information Line for up-to-date information on this meeting.

Dated: August 3, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–19383 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0386]

Strategic Plan for Consumer Education via Cooperative Agreement (U18)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to receive and consider a single source application under a cooperative agreement grant (U18) in fiscal year (FY) 2010 to the Partnership for Food Safety Education (PFSE) located in Washington, DC. This cooperative agreement grant is being provided to facilitate a "Strategic Plan for Consumer Education" to determine future directions for PFSE in carrying out a nationwide food safety education program on safe handling practices to prevent foodborne illness. The goal of the cooperative agreement is to help strengthen PFSE, so that FDA's goal may be achieved in improving consumer food safety practices and in turn reduce the incidence of foodborne illness.

DATES: Important dates are as follows:

1. The application due date is August 13, 2010.
2. The anticipated start date is September 2010.
3. The opening date is August 6, 2010.
4. The expiration date is August 16, 2010.

FOR FURTHER INFORMATION CONTACT AND ADDITIONAL REQUIREMENTS CONTACT:

Center's Contact: Danielle Schor, Office of Foods, Food and Drug Administration, WO-Bldg. 1, rm. 3230, Silver Spring, MD 20993, 301–796–5404, email: *Danielle.Schor@fda.hhs.gov*.

Grants Management Contact: Camille Peake, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2139, Rockville, MD 20857, 301–827–7175, FAX: 301–827–7101, email: *Camille.Peake@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.fda.gov/AboutFDA/CentersOffices/OC/OfficeofFoods/ucm212095*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Funding Opportunity Description Number RFA–FD–10–015
Catalog of Federal Domestic Assistance Number: 93.103

A. Background

This **Federal Register** notice is being issued by the Office of Foods within the Office of the Commissioner soliciting a sole source grant application from PFSE for funding in support of strategic planning for consumer education. PFSE, begun in May 1997, is the only organization that unites industry associations, consumer and public health groups, academia and government (the U.S. Department of Agriculture (USDA), the Centers for Disease and Control and Prevention, and the Food and Drug Administration) to educate the public about safe food handling and preparation. In 2009, PFSE had 18 association and non-profit contributing members. PFSE, a non-profit organization, is the creator and steward of the "Fight BAC! Campaign", a food safety education program developed using scientifically based recommendations and resulting from an extensive consumer research process. In 2007, PFSE joined with USDA to create the "Be Food Safe" platform—designed to bring a new look to the four core safe food handling practices and to bring food safety reminders to places where people shop for food. "Fight BAC! Campaign" materials are fully accessible online and utilized by consumers, teachers, dietitians, public health officials, and extension agents across the nation. FDA is one of several government agencies that has signed a Memorandum of Understanding with PFSE.

FDA actively participates with PFSE and values its educational programs, which are essential and consistent with the federal mandate for consumer education contained in section 903(d)(2)(D) (21 U.S.C. 393(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (the act), which states that the Secretary, through the Commissioner, shall be responsible for executing the act and for conducting educational and public information programs relating to the responsibilities of FDA.

B. Research Objectives

PFSE supports a large, complex, and multi-faceted consumer food safety education program with messaging and programs supported and aligned with FDA, the Centers for Disease Control and Prevention, and the U.S. Department of Agriculture. PFSE remains experienced and poised for continuing services. PFSE is well recognized throughout the country and the world for its science-based, behavior-changing consumer education campaigns.

This cooperative agreement will enable PFSE to continue and enhance the valued utility and impact of its program through the development of a new, updated, national food safety education strategic plan that addresses changes that have occurred through the past decade. These changes are particularly necessary to include emerging food safety concerns. In addition, the cooperative agreement will assist PFSE to build the capacity of the organization.

The funds will support a facilitated strategic planning process to determine future directions for PFSE in carrying out a nationwide food safety education program on safe handling practices to prevent foodborne illness. The process will include PFSE members as well as other stakeholders such as consumer groups, public health organizations, and food safety experts from academia who are not currently members. The process will include re-examining research-based messages, determining PFSE's role over the next 5 years, and determining strategies to enlarge PFSE membership to a greater variety of stakeholders.

Research objectives include the following: A re-examination of food safety messages to ensure inclusion of the latest science, the identification of new educational programs and marketing strategies based on social science theory and behavioral research, and an assessment of the most effective organizational structure for PFSE and opportunities for enlarging membership to enhance program delivery.

FDA will pay for qualitative or quantitative research with stakeholders and meetings with stakeholder groups and consumer experts.

FDA will support the research covered by the notice under the authority of section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance number 93.103.

C. Eligibility Information

Eligibility is limited to PFSE located in Washington, DC. FDA believes that continued support of PFSE is essential to carry out its Federal mandate for consumer education contained in the act. PFSE is the only organization qualified to fulfill the objectives of the proposed cooperative agreement.

II. Award Information/Funds Available

A. Award Amount

The estimated amount of funds available for support in FY 2010 will be for up to $340,000 (direct costs plus indirect costs).

B. Length of Support

This award will provide 1 year of support.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.fda.gov/AboutFDA/CentersOffices/OC/OfficeofFoods/default.htm*. Persons interested in applying for a grant may obtain an application from the PHS 398 application instructions available at *http://grants.nih.gov/grants/forms.htm*. For paper submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet Number (DUNS)

Applicants are now required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number that uniquely identifies business entities. To obtain a DUNS number, call DUN and Bradstreet at 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

- Step 2: Register with Central Contractor Registration

Applicants must register with the CCR database. You must have a DUNS number to begin your registration. This database is a government-wide warehouse of commercial and financial information for all organizations conducting business with the Federal Government. The preferred method for completing a registration is through the Web site at *http://www.ccr.gov*. This Web site provides a CCR handbook with detailed information on data you will need prior to beginning the online pre-registration, as well as steps to walk you through the registration process.

- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at: *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*.

After you have followed these steps, submit paper applications to: Camille Peake, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2139, Rockville, MD 20857, 301–827–7175, FAX: 301–827–7101, email: *Camille.Peake@fda.hhs.gov*.

Dated: July 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–19353 Filed 8–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Voluntary Customer Survey

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Proposal to establish a new collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Voluntary Customer Survey. This is a new collection of information that CBP is proposing. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 27563) on May 17, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 7, 2010.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Voluntary Customer Survey.

OMB Number: Will be assigned upon approval.

Form Number: None.

Abstract: Customs and Border Protection (CBP) plans to conduct a customer survey of international travelers seeking entry into the United States at the twenty highest volume airports in order to determine perceptions of the arrival process at our ports of entry. This voluntary customer survey will be conducted through short verbal surveys of travelers as they move through entry processing areas. Travelers who do not speak English will be given a written version of the survey in their language and may submit their responses in writing. The survey will include questions about wait times, ease of entry processing, and the level of communication, efficiency and professionalism of CBP officers. The results and analysis of the survey responses will be used to identify actionable items to improve services to the traveling public with respect to the entry processes for travelers arriving at United States air ports of entry.

Current Actions: This submission is being made to establish a new collection of information.

Type of Review: Approval of a new collection of information.

Affected Public: Individuals, Travelers.

Estimated Number of Respondents: 21,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,743.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: August 3, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–19483 Filed 8–5–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Exportation of Articles under Special Bond

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60–Day Notice and request for comments; Extension of an existing collection of information: 1651–0004.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Application for Exportation of Articles under Special Bond. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 5, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Exportation of Articles under Special Bond.

OMB Number: 1651–0004.

Form Number: Form 3495.

Abstract: This information is submitted on CBP Form 3495. This form is used by importers (and their agents) to notify CBP that the importer intends to export goods that were subject to a duty exemption based on a temporary stay in this country. It also serves as a permit to export in order to satisfy the importer's obligation to export the same goods and thereby get a duty exemption. Form 3495 is accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension without change.

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 30.

Estimated Total Annual Responses: 15,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 2,000.

Dated: August 3, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–19481 Filed 8–5–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection; Notice of Issuance of Final Determination Concerning a Certain Unified Communications Solution

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of a certain unified communications solution. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the unified communications solution for purposes of U.S. government procurement.

DATES: The final determination was issued on August 2, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alison Umberger, Valuation and Special Programs Branch: (202) 325–0267.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 2, 2010, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the unified communications solution which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H090115, was issued at the request of Avaya Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the unified communications solution, assembled, installed and programmed in the United States using subassemblies made in China and Israel, and software developed in the United States, is substantially transformed in the United States, such that the United States is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: August 2, 2010.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H090115

August 2, 2010

OT:RR:CTF:VS H090115 ARU

CATEGORY: Marking

Mr. Stuart P. Seidel, Baker & McKenzie LLP, 815 Connecticut Avenue, NW., Washington, DC 20006–4078, USA

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Avaya Unified Communications Solution ("*Communication Manager*")

Dear Mr. Seidel: This is in response to your letter dated December 29, 2009, requesting a final determination on behalf of Avaya Inc. ("Avaya"), pursuant to subpart B of part 177, Customs and Border Protection ("CBP") Regulations (19 CFR § 177.21 *et seq.*). Pursuant to our request, you provided additional information during a meeting on March 5, 2010.

Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of an Avaya Unified Communications Solution known as "Communication Manager." We note that Avaya is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination. In addition, we have reviewed and granted the importer's request for confidentiality pursuant to section 177.2(b)(7) of the Customs Regulations chapter 19, with respect to certain information submitted.

FACTS:

The end product at issue is a Unified Communications Solution which is made up of numerous electronic components that are assembled and integrated at an end user's premises in the United States using software known as "Communication Manager." Communication Manager is the IP telephony software foundation on which Avaya delivers unified communications to large and small enterprises. It can control and expand a system from fewer than 100 users to as many as 36,000 users on a single system to more than one million users on a single network. You state that the programming, assembly and installation of a system will typically take approximately one month to complete.

It is stated that Communication Manager adds functionality to certain individual components and changes functionality of other components. Although each installation at an end user's premises is different, due to the end user's needs, each system will consist of at least the following components: server, media gateways, circuit packs, and internet protocol ("IP") telephone sets. Avaya's Communication Manager software is developed and tested exclusively by Avaya in Denver, Colorado. Communication Manager is designed to run on a variety of Linux-based media servers. Linux is an open source operating system. Communication Manager provides centralized call control for a resilient, distributed network of media gateways and a wide range of analog, digital, and IP-based communication devices. It also has several advanced built-in applications, including mobility applications, call center features, advanced conference calling, and enhanced emergency 9–1–1 capabilities. Communication Manager is the foundation for building complete enterprise communication networks by supporting SIP, H.323, and other industry-standard communications protocols over a variety of different networks. This protocol support provides centralized voice mail, attendant operations, and call centers across multiple locations.

A. Hardware

1. Media Servers: Each Communication Solution consists of one or more media servers. Some servers are in the form of blades. These are cards (similar to printed circuit cards with components) that are fit or assembled into Media Gateways, while others are standalone units.

2. Media Gateways: You describe three models of Media Gateways.

i. G250 Media Gateway: a powerful branch communication solution that packs an IP telephony gateway, an advanced IP WAN router, a VPN gateway and a high-performance LAN switch into a compact, 2U high 19″ rack unit.

ii. G350 Media Gateway: a powerful converged networking solution that packs an IP telephony gateway, an advanced IP WAN router, a VPN Gateway, and a high-performance LAN switch into a compact (3U) modular chassis.

iii. G450 Media Gateway: consists of a 3U high, 19″ rack mountable chassis with field-removable Supervisor Main Board Module, Power Supplies, Fan Tray, DSP resources and memory.

3. Circuit Packs: A circuit pack, also known as a circuit card, circuit board, or printed circuit, is an electronic circuit consisting of one or more electronic components arranged on a substrate board or card with one of more conductive layers laminated on one or more insulating layers. The electronic components on the circuit pack can be inserted into holes or surface mounted on conductive pads using various alloys of metal called solder. Such circuit packs usually leave one or more connectors to integrate them into the system of which they are a part. Avaya's circuit packs are not stand-alone devices. They are inserted as components to Avaya's Media Gateway units. Avaya offers two types of circuit packs—a "TN" card and an "MM" card. TN circuit packs are based on older technology for use in legacy telephony systems, also called Telephone Interface Cards. MM circuit packs are based on newer technology, also called Media Modules.

4. Telephone Sets: Internet Protocol ("IP") telephones that before integration through Communication Manager have no functionality.

B. Software

You claim that the integration of the individual components is achieved through the use of software called Communication Manager, which adds functionality to certain individual components and changes functionality of the other components. Avaya's Communication Manager software is developed and tested exclusively by Avaya in Denver, Colorado. Avaya began development of Communication Manager in 2002 and since that time has spent significant resources in the development and maintenance of Communication Manager. All the engineering, development, and design were developed in the United States; however, a small percentage of the ongoing software development takes place abroad.

C. Assembly

1. Operations in China:

There are 6 main subassemblies that compose the Communication Manager solution. Subassemblies made in China include: Gateways, Servers, Media Modules, Telsets, and Circuit Packs. The hardware listed above is manufactured in China. The raw components for the hardware are obtained from various countries throughout Asia and Europe. Certain gateways are also manufactured in Israel and other countries, but will eventually be manufactured in China.

2. Operations in the United States:

All the engineering, development, design were developed in the United States. Communication Manager will be installed onto a solid state drive or hard drive residing on the server. It will be custom configured at the end user's facility or another location in the United States to integrate the various components. Although each installation at an end user's premises is different, due to the end user's needs, each system will consist of at least the following components: server, media gateways, circuit packs, and IP telephone sets. Once actual installation begins, approximately five (5) days is needed to customize the Communication Manager software for the end user. A total of 11 days is required to assemble the necessary equipment, install the hardware, and integrate the hardware and software. The complex installation and integration requires both adjustments to hardware and customized software programming. You claim that due to the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the Communication Manager, and the overall employment complexity in development of the software, the hardware is substantially transformed when the software is added and the system is integrated.

ISSUE:

What is the country of origin of Communication Manager Units for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of Part 177, 19 CFR § 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended ("TAA" 19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth at 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1).

The Federal Acquisition Regulations define "U.S.-made end product" as:

an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. 48 C.F.R. § 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

With respect to the product under consideration in the instant case, we note that CBP has not previously considered whether the components at issue are substantially transformed when brought together in the manner set forth above. However, CBP has considered whether components of various origins have been substantially transformed during the assembly of related products. Though such rulings may not be directly on point with the facts under consideration in the instant case, the guidance supplied by such cases may nonetheless be applied to resolve the issues presently before us. The determination will be in this instance "a mixed question of technology and customs law, mostly the latter." *Texas Instruments, Inc.* v. *United States,* 681 F.2d 778, 783 (C.C.P.A. 1982).

You claim that, "[i]n * * * rulings involving hardware which lacked the functional 'intelligence' characteristics present in the completed product, and where the firmware/software provided the merchandise's functionality, CBP determined that the products were substantially transformed into products of the country where the software which provided its functionality was installed and final testing occurred." We disagree with the scope of this statement. While the location of the software installation and testing is one factor to be considered, it is not the sole determinant. The country in which the software development takes place is also relevant.

In *Data General* v. *United States,* 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States, the programming of a foreign PROM (Programmable Read-Only Memory chip) substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function. That is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs

were designed by a project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming alters the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device possessing a desired distinctive circuit pattern was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In C.S.D. 84–86, CBP stated:

We are of the opinion that the rationale of the court in the Data General case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming * * *. [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* HQ 733085, dated July 13, 1990; and HQ 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions on it that allows it to perform certain functions of preventing piracy of software constituted substantial transformation); *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette did not constitute substantial transformation because it did not add value, did not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993 (concluding that motherboards were not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

In HQ 563012, dated May 4, 2004, CBP considered whether components of various origins were substantially transformed when assembled to form a fabric switch which involved a combination of computer hardware and software. Most of the assembly of computer hardware was performed in China. Then, in either Hong Kong or the U.S., the hardware was completed and the U.S.-origin software was downloaded onto the hardware. CBP noted that the U.S.-developed software provided the finished product with its "distinctive functional characteristics." In making the determination that the product was substantially transformed in the United States, where the fabric switch was assembled to completion, CBP considered both the assembly process that occurred in the United States and the configuration operations that required U.S.-origin software. In the scenario where the fabric switch was assembled to completion in Hong Kong, CBP determined the origin for marking purposes was Hong Kong.

In HQ 559255, dated August 21, 1995, a device referred to as a "CardDock" was under consideration for country of origin marking purposes. The CardDock was a device which was installed in IBM PC compatible computers. After installation, the units were able to accept PCMCIA cards for the purpose of interfacing such PCMCIA cards with the computer in which the CardDock unit was installed. The CardDock units were partially assembled abroad but completed in the United States. The overseas processing included manufacturing the product's injection molded plastic frame and installing integrated circuits onto a circuit board along with various diodes, resistors and capacitors. After such operations, these items were shipped to the United States for further processing that included mating a U.S.-origin circuit board to the foreign-origin frame and board. The assembled units were thereafter subjected to various testing procedures. In consideration of the foregoing, CBP held that the foreign-origin components, *i.e.,* the ISA boards, frame assemblies and connector cables, were substantially transformed when assembled to completion in the United States. In finding that the name, character, and use of the foreign-origin components had changed during processing in the United States, CBP noted that the components had lost their separate identity during assembly and had become an integral part of a new and distinct item which was visibly different from any of the individual foreign-origin components.

In HQ 735027, dated September 7, 1993, a device that software companies used to protect their software from piracy was under consideration for country of origin marking purposes. The device, referred to as the "MemoPlug," was assembled in Israel from parts that were obtained from Taiwan (such as various connectors and an Electronically Erasable Programmable Read Only Memory, or "EEPROM") and Israel (such as an internal circuit board). After assembly, these components were shipped to a processing facility in the United States where the EEPROM was programmed with special software. Such processing in the United States accounted for approximately 50 percent of the final selling price of the MemoPlugs. In finding that the foreign-origin components were substantially transformed in the United States, CBP noted that the U.S. processing transformed a blank media, the EEPROM, into a device that performed functions necessary to the prevention of software piracy.

We make our determinations based on the totality of the circumstances. Here, we take particular note of the fact that the installation of the Communication Manager software adds functionality to certain individual components and changes functionality of other components. This software is developed and tested exclusively by Avaya in Denver, Colorado. Avaya began development of Communication Manager in 2002 and since that time has spent significant resources in the development and maintenance of the software. In addition, assembly and installation of the hardware components that make up the Avaya Communication Solution will typically take approximately one month to complete and are performed in the United States. While the subassemblies are manufactured in China and Israel, all of the initial engineering, development, and design were developed in the United States.

Based upon the above precedents and the totality of the circumstances, we find that the there is a substantial transformation of the component parts in the United States, the location where the final assembly and installation of the hardware as well as the application of the Communication Manager software occur. It follows that we find the country of origin for government procurement purposes is the United States.

HOLDING:

Based on the facts provided, the assembly, installation, and programming operations performed in the United States impart the essential character to Communication Manager. As such, Communication Manager will be considered a product of the United States for the purpose of government procurement.

Notice of this final determination will be given in the Federal Register as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

[FR Doc. 2010–19363 Filed 8–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1928–DR; Docket ID FEMA–2010–0002]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1928–DR), dated July 27, 2010, and related determinations.

DATES: *Effective Date:* July 27, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 27, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms and flooding during the period of May 12–13, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Des Moines and Lee Counties for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19467 Filed 8–5–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

DATES: *Effective Date:* July 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 29, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, flooding, and tornadoes beginning on June 1, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Adams, Appanoose, Audubon, Buena Vista, Butler, Cherokee, Clay, Davis, Decatur, Franklin, Howard, Humboldt, Iowa, Lee, Lyon, Madison, Marion, Mills, Monroe, Montgomery, O'Brien, Osceola, Palo Alto, Ringgold, Shelby, Union, Van Buren, Wapello, Warren, Wayne, Webster, and Wright Counties for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19465 Filed 8–5–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1929–DR; Docket ID FEMA–2010–0002]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1929–DR), dated July 29, 2010, and related determinations.

DATES: *Effective Date:* July 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 29, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms, tornadoes, and flooding during the period of June 16–24, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Dewey, Perkins, and Ziebach Counties, and the Cheyenne River Indian Reservation for Public Assistance.

All counties and Tribes within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19464 Filed 8–5–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1925–DR; Docket ID FEMA–2010–0002]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1925–DR), dated July 23, 2010, and related determinations.

DATES: *Effective Date:* July 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 23, 2010.

Shelby County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19466 Filed 8–5–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1925–DR; Docket ID FEMA–2010–0002]

Kentucky; 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 Commonwealth of Kentucky (FEMA–1925–DR), dated July 23, 2010, and related determinations.

DATES: *Effective Date:* July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 30, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–19455 Filed 8–5–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–80]

Notice of Submission of Proposed Information Collection to OMB; Training Evaluation Form

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Training Evaluation Form will be used by HUD to determine how training provided to public housing agencies and the public can be improved. The completion of the form will be voluntary.

DATES: *Comments Due Date:* September 7, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Training Evaluation Form.

OMB Approval Number: 2577- New.

Form Numbers: HUD–50945.

Description of the Need for the Information and Its Proposed Use:

The Training Evaluation Form will be used by HUD to determine how training provided to public housing agencies and the public can be improved.

Frequency of Submission: on-occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	29,288		1		.033		966

Total Estimated Burden Hours: 966.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *July 30, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–19479 Filed 8–5–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–79]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Section 3 Implementation and Coordination Grant Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to provide competitive funding to States, units of local government, Public Housing Authorities, Indian Housing Authorities, Indian Tribes, or other public bodies to pay for the salaries, fringe benefits, and administrative expenses related to hiring a Section 3 Program Coordinator. Information collected under this approval will be used to select the highest ranked applicants, and to conduct quarterly and annual performance assessments.

DATES: *Comments Due Date:* August 20, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Leroy.MkinneyJR@hud.gov;* telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection

techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 3 Implementation and Coordination Grant Application.

OMB Control Number: 2529–New.

Agency Form Numbers: SF–424, SF–424 Supplement, SF LLL, HUD–2880, HUD–2990, HUD–2993, HUD–424CB, HUD–424CBW, HUD–2994–A, HUD–27300, HUD–96010, and HUD–96011.

Description of Information Collection: This is a new information collection. The proposed information collection is intended to assess the qualifications of applicants for funding under the Section 3 Program Implementation and Coordination Notice of Funding Availability (NOFA). It will assess each applicant's ability to hire a Section 3 Program Coordinator that will be responsible for carrying out key assignments that will produce employment, training, and contracting opportunities for low- and very low-income persons and the businesses that provide services to them. Recipients of funding under this NOFA will also be required to submit quarterly and annual reports to the Department documenting their progress and performance with accomplishing the goals of the NOFA. This information will be submitted to HUD in the form of narrative reports that are based on milestones and deliverables established in the grantee's Work Plan.

Members of Affected Public: States, units of local government, Public Housing Authorities, Indian Housing Authorities, Indian Tribes, or other public bodies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: An estimation of the total number of hours needed to prepare the information collection is 170, the likely number of respondents is 515, with a frequency of response of 5 per annum.

Total Estimated Burden Hours: 170.

Status of the proposed information collection: 2529–New.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 30, 2010.

Leroy McKinney Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–19482 Filed 8–5–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–81]

Notice of Submission of Proposed Information Collection to OMB Emergency Comment Request; Evaluation of the Rapid Re-housing for Families Demonstration Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department of Housing and Urban Development is seeking emergency review of the Paperwork Reduction Act requirements associated with HUD's evaluation of the Rapid Re-housing for Families Demonstration Program. This information collection request covers only the collection of participant contact information, and will be followed at a later date by an information collection request for the 12-month follow-up survey to be administered to evaluation participants.

DATES: *Comments Due Date: August 20, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Leroy.MkinneyJR@hud.gov;* telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Evaluation of the Rapid Re-housing for Families Demonstration Program.

OMB Control Number: 2528–New.

Agency Form Numbers: None.

Description of Information Collection: This is a new information collection. The Department of Housing and Urban Development is seeking emergency review of the Paperwork Reduction Act requirements associated with HUD's evaluation of the Rapid Re-housing for Families Demonstration Program. This information collection request covers only the collection of participant contact information, and will be followed at a later date by an information collection request for the 12-month follow-up survey to be administered to evaluation participants.

Members of Affected Public: Families enrolled in the Rapid Re-housing for Families Demonstration Program who agree to participate in the evaluation.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: The estimated number of respondents is 1,200; the frequency of response is once; and the total reporting burden will be approximately 100 hours.

Total Estimated Burden Hours: 100.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 30, 2010.

Leroy McKinney Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–19476 Filed 8–5–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–30]

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: August 6, 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: July 29, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–19082 Filed 8–5–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement for the Proposed Fee-to-Trust Conveyance of Property for the Seminole Tribe of Florida

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs, in cooperation with the Seminole Tribe of Florida (Tribe), intends to prepare an environmental impact statement for the Tribe's proposed 47± acre trust acquisition and subsequent construction of a mixed-use development in Broward County, Florida. The project site may include, but is not limited to, a variety of proposed land uses such as a hotel, commercial retail uses, fitness and entertainment facilities, and related employee parking. The purposes of the proposed action are to consolidate the Tribe's land holdings surrounding the existing Coconut Creek Casino into one contiguous trust property, to improve the Tribe's economy, and to help Tribal members attain economic self sufficiency. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the environmental impact statement.

DATES: Written comments on the scope of the environmental impact statement or implementation of the proposal must arrive by September 20, 2010. The public scoping meeting will be held on September 15, 2010, from 6 p.m. local time.

ADDRESSES: You may mail, hand carry, or fax written comments to Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, Fax (615) 564–6701. *Please see* the **SUPPLMENTARY INFORMATION** section of this notice for directions on submitting comments. The public scoping meeting will be held at: Coral Springs High School Auditorium, 7201 West Sample Road, Coral Springs, FL 33065–2249.

FOR FURTHER INFORMATION CONTACT: Kurt G. Chandler, Bureau of Indian Affairs, (615) 564–6832.

SUPPLEMENTARY INFORMATION: The Tribe has asked the Bureau of Indian Affairs to acquire into trust 47 ± acres of land. The Tribe proposes to convert a portion of this land into a mixed-use development. The proposed trust acquisition lands are immediately adjacent to lands currently held in trust for the benefit of the Tribe. Placing the approximately 47 acres into trust would consolidate the Tribe's land holdings into one contiguous trust property.

In addition to the fee-to-trust action, the proposed action also includes developing a 1000-room hotel, restaurants, retail establishments, entertainment facilities, a spa and health club, and a convention center. The proposed development also includes a parking garage and associated employee parking. Significant issues to be covered during the scoping process may include, but are not limited to, air quality, transportation, surface and groundwater resources, biological resources, cultural resources, socioeconomic conditions, public services, infrastructure, land use, aesthetics, and environmental justice.

Directions for Submitting Comments

Please include your name, return address and the caption, "DEIS Scoping Comments, Seminole Tribe of Florida's Trust Acquisition Project," on the first page of your written comments.

Public Availability of Comments

Comments, including names and addresses of respondents, will be available for public review at the Tennessee office shown in the **ADDRESSES** section from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and related Department of the Interior requirements in 43 CFR part 46 and the Department of the Interior Manual (516 DM 2), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: July 20, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–19193 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Final Environmental Impact Statement for the Confederated Tribes of the Warm Springs Reservation of Oregon Proposed Trust Acquisition and Resort and Casino Project, Cascade Locks, Hood River County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Indian Affairs (BIA) announces the availability of the Final Environmental Impact Statement (EIS) for the proposed 25-acre trust acquisition for the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribe) within the City of Cascade Locks, Hood River County, Oregon. The acquired trust land would be used for the development of a casino and related hotel, dining, and entertainment facilities. The purpose of the proposed action is to improve the Tribe's long-term economic conditions and support its self-sufficiency, both with respect to its government operations and its members. The Final EIS considers casino alternatives in Hood River County and on the Warm Springs Indian Reservation. The Final EIS identifies the Cascade Locks Resort and Casino Project as the BIA's preferred alternative.

DATES: The Record of Decision on the proposed action will be issued on or after September 20, 2010. Any comments on the Final EIS must arrive by September 7, 2010.

ADDRESSES: The Final EIS will be available at *http://www.gorgecasinoEIS.com* and at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this Notice. You may mail or hand-carry written comments to Mr. Scott Aikin, Division of Natural Resources Chief, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, Oregon 97232. You may also fax your comments to (503) 231–6791. *See* the **SUPPLEMENTARY INFORMATION** section of this notice for directions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Aikin, Bureau of Indian Affairs, (503) 231–6883.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take 25 acres of land in the City of Cascade Locks into trust on behalf of the Tribe. The Tribe would develop a resort and casino on the newly acquired trust land and lease adjacent lands (approximately 35 acres) from the Port of Cascade Locks for parking and other facilities related to the resort and casino development. The resort and casino project also would include a new interchange on Interstate 84 (I–84) and local transportation system improvements in coordination with the Federal Highway Administration (FHWA) and the Oregon Department of Transportation (ODOT). The FHWA and ODOT are cooperating agencies in the development of the EIS. Other cooperating agencies include the City of Cascade Locks, the Port of Cascade Locks, and Hood River County, all in the State of Oregon.

Project alternatives considered in the Final EIS include: (1) Cascade Locks Resort and Casino Project; (2) Hood River Alternative; (3) Warm Springs Alternative; and (4) no action. The Cascade Locks Resort and Casino Project is the BIA's Preferred Alternative based on the findings of the EIS, however, the BIA must conduct a complete evaluation of the criteria listed in 25 CFR part 151 prior to making a final decision. The BIA may, in its Record of Decision, select an alternative other than the Preferred Alternative, including no action or another alternative analyzed in the Final EIS. Environmental issues addressed in the Final EIS include geology and soils, land use, water resources, air quality, noise, plants and wildlife, endangered species, cultural resources, socioeconomic conditions (including environmental justice), transportation, public services, the visual environment, and hazardous wastes and materials. The Final EIS examines the direct, indirect, and cumulative effects of each alternative on these resources. Mitigation measures to address adverse impacts are identified in the Final EIS.

The BIA has afforded other government agencies and the public extensive opportunity to participate in the preparation of this EIS. The BIA published a notice of intent to prepare the EIS for the proposed action in the **Federal Register** on August 30, 2005 (70 FR 51363). A Notice of Availability for the Draft EIS was published in the **Federal Register** on February 15, 2008 (73 FR 8897). The Draft EIS was available for public comment from February 15, 2008, to May 15, 2008. The total public comment period was 90 days. The BIA held five public hearings on the Draft EIS, one on March 3, 2008, in Warm Springs, Oregon; one on March 10, 2008, in Cascade Locks, Oregon; one on March 12, 2008, in Stevenson, Washington; one on March 13, 2008, in Portland, Oregon; and one on March 17, 2008, in Hood River, Oregon.

Availability of the Final EIS: Copies of the Final EIS have been distributed to Federal, State, regional, and local agencies, Native American Tribes and organizations, elected officials, and agencies, organizations, and individuals who may be interested or affected. To obtain a copy of the Final EIS, see **ADDRESSES** above. Copies of the Final EIS are also available for review at the following locations:

- Bureau of Indian Affairs, Northwest Regional Office, 911 NE. 11th Avenue, Portland, Oregon 97232;
- Port of Cascade Locks, 710 Lucy Lane, Cascade Locks, Oregon 97014;
- Federal Highway Administration, 530 Center Street, Room 100, Salem, Oregon 97301;
- Cascade Locks Library, 140 SE Wa-Na-Pa Street, Cascade Locks, Oregon 97031;
- Multnomah County Library, Central Branch, 801 SW. 10th Street, Portland, Oregon 97205;
- Gresham Library 385 NW. Miller Avenue, Gresham, Oregon 97030;
- Vancouver Community Library, 1007 E. Mill Plain Boulevard, Vancouver, Washington 98663;
- Hood River County, 601 State Street, Hood River, Oregon 97031;
- Oregon Department of Transportation, Region 1, 123 NW. Flanders, Portland, Oregon 97209;
- Hood River County Library, 502 State Street, Hood River, Oregon 97014;
- Mosier City Library, 3rd Street, Mosier, OR 97040;
- Stevenson Community Library, 120 NW. Vancouver Avenue, Stevenson, Washington 98648;
- Fairview-Columbia Library, 1520 NE. Village Street, Fairview, Oregon 97024;
- White Salmon Valley Community Library, #5 Town and Country Square, White Salmon, Washington 98672.

Directions for Submitting Comments: Please include your name, return address, and the caption, "Final EIS Comments, Confederated Tribes of the Warm Springs Reservation of Oregon Trust Acquisition and Resort/Casino Project," on the first page of your written comments.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published in accordance with sections 1503.1 and 1506.6 of the Council of Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C.

4371 *et seq.*), Department of the Interior Manual (516 DM 4), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.l.

Dated: July 20, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–19195 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Proposed Enterprise Rancheria Gaming Facility and Hotel Fee-to-Trust Acquisition Project, Yuba County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Enterprise Rancheria of Estom Yumeka Maidu Tribe (Tribe), National Indian Gaming Commission, U.S. Environmental Protection Agency (EPA) and Yuba County, California as cooperating agencies, intends to file a Final Environmental Impact Statement (FEIS) with the EPA for the Tribe's proposed Gaming Facility and Hotel Fee-to-Trust Acquisition Project to be located within unincorporated Yuba County, California, and that the FEIS is now available for public review.

DATES: The Record of Decision on the proposed action will be issued no sooner than 30 days after the release of the FEIS. Thus, any comments on the FEIS must arrive by September 7, 2010.

ADDRESSES: You may mail or hand carry written comments to Dale Morris, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. The FEIS is available for public review on the following Web site: *http://www.EnterpriseEIS.com* and at the Yuba County Public Library, 303 2nd Street, Marysville, California 95901; the Sutter County Library, 720 Forbes Avenue, Yuba City, California 95991; and the Butte County Library, 1820 Mitchell Avenue, Oroville, California 95966. *See* **SUPPLEMENTARY INFORMATION** for instructions for submitting comments and instructions for obtaining a compact disk copy of the FEIS.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6051. General information for the Yuba County Public Library can be obtained by calling (530) 749–7380. For information on Sutter County Library please call (530) 822–7137. For the Butte County Library, please call (530) 538–7641.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take into trust 40 acres currently held in fee, on which the Tribe proposes to construct a gaming facility, hotel, parking facilities, and other facilities. The proposed 40-acre site (Yuba Site) is located in unincorporated Yuba County, California, approximately four miles southeast of the Community of Olivehurst, near the intersection of Forty Mile Road and State Route 65 (SR–65). The proposed project includes the development of an approximately 207,760 square-foot gaming facility, 107,125 square-foot hotel, and 2,750 parking spaces on the Yuba Site. The two-story gaming facility would include a casino floor, food and beverage areas (consisting of a buffet, gourmet restaurant, and bar), meeting space, guest support services, offices, and a security area. The resort would include: an eight-story hotel with 170 rooms, a pool area, an exercise room, retail space, and an arcade. Access to the site would be provided from Forty Mile Road.

Project alternatives considered in the FEIS include: (A) The proposed casino and hotel alternative; (B) a reduced intensity alternative; (C) non-gaming use alternative; (D) a reduced intensity—Butte County alternative; and (E) a no action alternative. Alternative A has been selected as the Preferred Alternative, as discussed in the FEIS. The alternatives are intended to assist the review of the issues presented, but the Preferred Alternative does not necessarily reflect what the final decision will be, because a complete evaluation of the criteria listed in 25 CFR part 151 may lead to a final decision that selects an alternative other than the Preferred Alternative, including no action, or that selects a variant of the Preferred or another of the alternatives analyzed in the FEIS.

Environmental issues addressed in the FEIS include land resources, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions, environmental justice, transportation and circulation, land use, public services, noise, hazardous materials, visual resources, cumulative effects, indirect effects and mitigation measures.

The BIA has afforded other government agencies and the public extensive opportunity to participate in the preparation of this EIS. The BIA published a notice of intent to prepare the EIS for the proposed action in the **Federal Register** on May 20, 2005 (70 FR 29363). The BIA held a public scoping meeting on June 9, 2005 in Marysville, California. A NOA for the Draft EIS (DEIS) was published in the **Federal Register** on March 21, 2008 (73 FR 15191). The DEIS was available for public comment from March 21 to May 5, 2008. The BIA held a public hearing on the DEIS on April 9, 2008, in Marysville, California.

To submit comments on the FEIS, please include your name, return address and the caption, "FEIS Comments, Enterprise Rancheria, Gaming Facility and Hotel Fee-to-Trust Acquisition Project," on the first page of your written comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

To obtain compact disk copy of the FEIS, please provide your name and address in writing or by voicemail to John Rydzik, Chief of the Division of Environmental, Cultural Resources Management and Safety, at the BIA address above or at the telephone number provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the FEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 20, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–19194 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–48668, 49502, 49503, 49504, LLCAD09000.L51010000.FX0000, LVRWB09B2400]

Notice of Availability of the Proposed California Desert Conservation Area Plan Amendment and Final Environmental Impact Statement for the Ivanpah Solar Electric Generating System, San Bernardino County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a proposed California Desert Conservation Area (CDCA) Plan Amendment/Final Environmental Impact Statement (EIS) for the Ivanpah Solar Electric Generating System (ISEGS) Project and by this notice is announcing its availability.

DATES: The publication of the Environmental Protection Agency's (EPA) Notice of Availability of this Final EIS in the **Federal Register** initiates a 30-day public comment period (*see* "**ADDRESSES**" section). In addition, the BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's proposed CDCA Plan Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the EPA publishes its notice of availability in the **Federal Register** (*see* "**ADDRESSES**" section).

ADDRESSES: Please submit comments on the Final EIS to Tom Hurshman, Project Manager, telephone (970) 240–5345; address: Bureau of Land Management, 2465 South Townsend Avenue, Montrose, Colorado 81401 or by e-mail: *caisegs@blm.gov.* Copies of the proposed CDCA Plan Amendment/Final EIS are available for public inspection at the Needles Field Office, 1303 South Highway 95, Needles, California 92363. Interested persons may also review the CDCA Plan Amendment/Final EIS at the following Web site: *http://www.blm.gov/ca/st/en/fo/needles/nefo_nepa.html.* All protests of the proposed CDCA Plan Amendment must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), *Attention:* Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: BLM Director (210), *Attention:* Brenda Williams, 1620 L Street, N.W., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Tom Hurshman, Project Manager, telephone (970) 240–5345; address Bureau of Land Management, 2465 South Townsend Avenue, Montrose, Colorado 81401; *e-mail: caisegs@blm.gov.*

SUPPLEMENTARY INFORMATION: BrightSource Energy (BSE) has filed right-of-way (ROW) applications on public land for development of the proposed ISEGS concentrated thermal solar power project that would generate up to 400 megawatts of renewable electricity through the use of 214,000 heliostats. The proposed project would be located on 4,073 acres of public land 4.5 miles south of Primm, Nevada in San Bernardino County, California.

The BLM purpose and need for the ISEGS project EIS is to respond to the application under Title V of the FLPMA (43 U.S.C. 1761) for a ROW grant to construct, operate, maintain, and decommission a concentrated solar electric generation plant and associated infrastructure on public land in compliance with FLPMA, the BLM regulations, and other applicable Federal laws. The BLM will decide to approve, approve with modifications, or deny ROW applications filed by Solar Partners I, LLC; Solar Partners II, LLC; Solar Partners IV, LLC; and Solar Partners VIII, LLC, which are subsidiaries of BSE, to develop the ISEGS project. The CDCA Plan (1980, as amended), while recognizing the potential compatibility of solar power generation facilities on public lands, requires that all sites associated with power generation or transmission not identified in that plan be considered through the plan amendment process. If the BLM decides to grant a ROW, the BLM would also amend the CDCA Plan as required.

The proposed action in the CDCA Plan Amendment/Final EIS is to authorize the ISEGS project and approve the plan amendment in response to the applications received from BSE. The BLM's Preferred alternative is Mitigated Ivanpah 3. The preferred alternative reduces the capacity of the project to 370 megawatts, reduces the number of heliostats to 173,000, and reduces the site disturbance to 3,640 acres in order to reduce impacts to sensitive plant and animal species. In addition to the proposed action and the preferred alternative, the BLM has analyzed an alternative that would relocate a portion of the proposed action closer to the Interstate 15 corridor (Modified I–15 Alternative). As required under NEPA, the CDCA Plan Amendment/Final EIS analyzes a no action alternative that would not require a plan amendment. The BLM has taken into consideration the provisions of the Energy Policy Act of 2005 (EPAct 05) and Secretarial Orders 3283 *Enhancing Renewable Energy Development on the Public Lands* and 3285A1 *Renewable Energy Development by the Department of the Interior* in responding to the ISEGS applications.

The applicant has applied to the Department of Energy (DOE) for a loan guarantee under Title XVII of EPAct 05, as amended by Section 406 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5. The DOE is a cooperating agency in the preparation of the CDCA Plan Amendment/Final EIS. The BLM published a Notice of Availability of the Draft Ivanpah Solar Electric Generation System EIS and the Draft CDCA Plan Amendment in the **Federal Register** on November 10, 2009 (74 FR 58043). The Draft EIS was available for a 90-day public comment period which closed on February 11, 2010. Subsequent to the Draft EIS, the BLM published a Notice of Availability of the Supplemental Draft EIS for the Ivanpah Solar Electric Generation System Project in the **Federal Register** on April 16, 2010 (75 FR 19992), to evaluate the environmental impacts of two additional alternatives. The public comment period on the Supplemental Draft EIS closed on June 1, 2010. Comments received on the Draft EIS and the Supplemental Draft EIS are addressed in the CDCA Plan Amendment/Final EIS. Wilderness characteristics are addressed and analyzed in the CDCA Plan Amendment/Final EIS.

Instructions for filing a protest with the Director of the BLM regarding the proposed CDCA Plan Amendment may be found in the "Dear Reader Letter" of the CDCA Plan Amendment/Final EIS and at 43 CFR 1610.5–2. E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–912–7212, and e-mails to *Brenda_Hudgens-*

Williams@blm.gov. All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10 and 43 CFR 1610.2 and 1610.5.

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2010–19212 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 49537, LLCAD08000, L51030000.FX0000, LVRAB109AA03]

Notice of Availability of the Final Environmental Impact Statement and Proposed Amendment to the California Desert Conservation Area Plan for the Calico Solar (Formerly SES Solar One) Project, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) Amendment/Final Environmental Impact Statement (EIS) for the Calico Solar (formerly SES Solar One) Project, San Bernardino County, California and for the California Desert Conservation Area (CDCA) Plan and by this notice is announcing the availability of the Final EIS.

DATES: The publication of the Environmental Protection Agency's (EPA) Notice of Availability of this Final EIS in the **Federal Register** initiates a 30-day public comment period (see **ADDRESSES** section). In addition, the BLM's planning regulations state that any person who meets the conditions as described in the regulations may protest the agency's Proposed RMP Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency (EPA) publishes its notice in the **Federal Register** (see **ADDRESSES** section).

ADDRESSES: Please submit comments on the Final EIS to Jim Stobaugh, National Project Manager *by mail:* P.O. Box 12000, Reno, Nevada 89520; or *e-mail: Jim_Stobaugh@blm.gov.* Copies of the Proposed RMP Amendment/Final EIS are available for public inspection at the BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311. Interested persons may also review the Proposed RMP Amendment/Final EIS at the following Web site: *http://www.blm.gov/ca/st/en/fo/barstow/solar_one_calico.html.* All protests of the Proposed RMP amendment must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), *Attention:* Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: BLM Director (210), *Attention:* Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jim Stobaugh, BLM National Project Manager by mail: P. O. Box 12000, Reno, Nevada 89520; *phone:* (775) 861–6478; or *e-mail: Jim_Stobaugh@blm.gov.*

SUPPLEMENTARY INFORMATION: On March 14, 2007, Stirling Energy Systems (SES) Solar Six, Limited Liability Corporation (LLC) and SES Solar Three, LLC submitted applications for rights-of-way (ROW) grants to the BLM to construct and operate a concentrated solar thermal power plant facility on public lands in San Bernardino County, California. The two ROW application areas were subsequently combined into one project (SES Solar One) proposed for an 8,230-acre site located immediately north of Interstate 40, approximately 37 miles east of Barstow, California. On December 2, 2008, SES Solar One, LLC (SES Solar Three, LLC and SES Solar Six, LLC) submitted an Application for Certification to the California Energy Commission (CEC) to construct and operate the SES Solar One Project. In January 2010, the project name was formally changed to Calico Solar as a result of SES Solar Three, LLC merging with SES Solar Six, LLC to create Calico Solar, LLC. Calico Solar, LLC is a subsidiary of Tessera Solar.

The BLM's purpose and need for the Calico Solar Project is to respond to the Calico Solar, LLC's application under Title V of FLPMA (43 U.S.C. 1761) for a ROW grant to construct, operate, and decommission a solar thermal power facility on public lands in compliance with FLPMA, the BLM's ROW regulations, and other applicable Federal laws.

A joint state-Federal environmental Staff Assessment (SA)A/Draft EIS of the Calico Solar Project was prepared in accordance with a 2007 Memorandum of Understanding between the BLM California Desert District and CEC to conduct joint environmental reviews of solar thermal projects that are proposed on Federal land managed by the BLM. The joint environmental review was achieved through in a single combined California Environmental Quality Act/NEPA analysis SA/Draft EIS document.

In the SA/Draft EIS, the proposed project was described to include construction of an 850 megawatt (MW), 8,230-acre (13 square mile) solar energy facility on BLM-administered land. Approximately 1,718 acres of public land within the project site were either donated to the BLM or acquired with Land and Water Conservation Funds (LWCF).

In the Final EIS, the BLM modified the proposed project (Proposed Action) to form an Agency Preferred Alternative which reduces the project footprint to 6,215-acres (9.7 square miles) for the 850 MW Calico Solar Project facilities. The Agency Preferred Alternative is designed to avoid 1,770 acres of habitat for desert tortoise, bighorn sheep, and rare plants through the creation of a 4000-foot wildlife corridor between the north project boundary and the Cady Mountains. It also avoids impacts to rare plants within environmentally-sensitive areas within the project boundary and excludes 245 acres of land with cultural resources outside of the project site, which eliminates adverse impacts and mitigation needs for these resources.

The project proposal includes 34,000, 25-kilowatt (kW) Stirling solar dish systems (SunCatchers). Each SunCatcher consists of an approximately 38-foot high by 40-foot wide solar concentrator dish that supports an array of curved glass mirrors. These mirrors automatically track the sun and focus solar energy onto a power conversion unit that generates electricity. The Calico Solar Project would also include a number of related facilities and infrastructure, including: A new 230-kilovolt (kV) Calico Solar Substation; about 2 miles of single-circuit 230-kV interconnection transmission line from the new Calico Substation to the existing Southern California Edison (SCE) Pisgah Substation; an administration building; a main services complex; and Project roads and fencing. Approximately 0.1

miles of the new 230-kV transmission line would be outside of the project site and inside the SCE ROW.

The proposed solar facility has an estimated life span of 30 years. The BLM is considering a renewable 20-year ROW grant authorization to align with the 20-year Power Purchase Agreement signed by the Applicant and SCE on August 9, 2005. Upgrades to the SCE electrical transmission system would be needed to transmit the electricity generated from the Calico Solar Project and are identified as a reasonably foreseeable future actions in the Final EIS. The existing SCE transmission lines have the ability to handle about 275 MW of generation and upgrades would be needed to handle all of the proposed new capacity of 850 MW. These upgrades would be built outside of the Calico Solar Project site and are being considered by the BLM as a separate ROW grant application that will require separate NEPA review. The SCE upgrades would also require licensing by the California Public Utilities Commission and separate environmental review under the California Environmental Quality Act.

The BLM is also considering amending the CDCA Plan as part of processing the project proposal. The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not identified in that Plan be considered through the plan amendment process. If the BLM decides to approve the ROW authorization, the BLM must also amend the CDCA Plan.

In the Final EIS analysis, the BLM's proposed action is to authorize the modified 850 MW Calico Solar project and approve the CDCA Plan amendment in response to the application received from Calico Solar, LLC. The action alternatives include the: (1) 850–MW Proposed Action (8,230 acres (13 square miles)); (2) 850–MW Agency Preferred Alternative (6,512 acres (9.7 square miles)); (3) 275–MW Reduced Acreage Alternative (2,320 acres (3.6 square miles)); and (4) 850–MW Avoidance of Donated and Acquired Lands Alternative (7,050 acres (11 square miles)) which avoids 1,718 acres of donated and LWCF-acquired lands (included as part of the Proposed Action and Agency Preferred Alternative). The latter alternative was described in the Staff Assessment (SA)/Draft EIS to accommodate 28,800 SunCatchers and generate 720 MW, but the Applicant has since conducted more detailed site analysis which indicates that this alternative could accommodate 34,000 SunCatchers and generate 850 MW of electricity from solar thermal power.

The Final EIS also analyzes three alternatives under which the project would not be approved: (1) Deny the Calico Solar Project ROW grant application and not amend the CDCA Plan (the "No Action " alternative); (2) deny the Calico Solar Project ROW grant, but amend the CDCA Plan to allow other solar energy project applications on the proposed project site; and (3) deny the Calico Solar Project ROW grant and amend the CDCA Plan to prohibit solar energy project applications on the proposed project site. As part of its review of the Calico Solar, LLC application, the BLM considered the Energy Policy Act of 2005 and Secretarial Orders 3283 (Enhancing Renewable Energy Development on the Public Lands) and 3285A1 (Renewable Energy Development by the Department of the Interior).The BLM's Final EIS evaluates the potential impacts of the proposed Calico Solar Project on air quality and climate; biological resources; non-native and invasive species; cultural resources and paleontology; fire and fuels; geology, soils, topography, mineral resources and seismicity; grazing, wild horses and burros; land use, including corridor analysis; noise and vibration; public health and safety, and hazardous materials; recreation; socioeconomics and environmental justice; special designations; traffic and transportation; visual resources; wilderness characteristics; and water resources.

E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 912–7212, and e-mails to *Brenda_Hudgens-Williams@blm.gov.* Instructions for filing a protest with the Director of the BLM regarding the proposed CDCA Plan Amendment may be found in the "Dear Reader Letter" of the CDCA Plan Amendment/Final EIS and at 43 CFR 1610.5–2. All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Please note that public comments will be available for public review and disclosure at the above BLM office address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in any comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10; and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2010–19470 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the North Fork Rancheria's Proposed 305-Acre Trust Acquisition and Hotel/Casino Project, Madera County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the North Fork Rancheria of Mono Indians (Tribe), California Department of Transportation (Caltrans), Madera Irrigation District, City of Madera, National Indian Gaming Commission (NIGC), and U.S. Environmental Protection Agency (EPA) as cooperating agencies, intends to file a Final Environmental Impact Statement (FEIS) with the EPA for the Tribe's proposed 305-acre trust acquisition and casino-resort project in unincorporated Madera County, just north of the City of Madera, California, and that the FEIS is now available for public review.

DATES: The Record of Decision (ROD) on the proposed action will be issued no sooner than 30 days after the release of the FEIS. Submit comments on the FEIS by September 7, 2010.

ADDRESSES: Mail or hand carry written comments to Dale Morris, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. *See* **SUPPLEMENTARY INFORMATION** for directions on submitting comments and public availability of the FEIS.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6051.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take into trust 305 acres currently held in fee, on which the Tribe proposes to develop a hotel, casino, parking facilities, and supporting infrastructure. The proposed 305-acre site (Madera Site) is located in unincorporated Madera County, California, just north of the City of Madera and adjacent to State Route 99 (SR–99). The Madera Site is bounded on the north by Avenue 18, rural residential land, light industrial land, and vacant land; on the east by Golden State Boulevard and SR–99; on the south by agricultural land and residential land; and on the west by Road 23 and agricultural land. The Proposed Project includes the development of an approximately 472,000 square foot hotel and casino resort and associated facilities, which include a main gaming hall, food and beverage services, retail space, banquet/meeting space, and administration space. Food and beverage facilities would include three full service restaurants, a five-tenant food court, a buffet, four bars and a lounge. The hotel would include 200 rooms, a resort style pool area and a spa. Approximately 4,500 parking spaces would be provided.

Project alternatives considered in the FEIS include: (A) The proposed casino and hotel alternative; (B) a reduced-intensity alternative; (C) a non-gaming use alternative; (D) the North Fork Rancheria alternative site; and (E) a no action alternative. Alternative A has been selected as the Preferred Alternative, as discussed in the FEIS. The alternatives are intended to assist the review of the issues presented, but the Preferred Alternative does not necessarily reflect what the final decision will be, because a complete evaluation of the criteria listed in 25 CFR part 151 may lead to a final decision that selects an alternative other than the Preferred Alternative, including no action, or that selects a variant of the Preferred or another of the alternatives analyzed in the FEIS.

Environmental issues addressed in the FEIS include land resources, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions, environmental justice, transportation and circulation, land use, public services, noise, hazardous materials, visual resources, cumulative effects, indirect effects and mitigation measures.

The BIA has afforded other government agencies and the public extensive opportunity to participate in the preparation of this EIS. The BIA published a notice of intent to prepare the EIS for the proposed action in the **Federal Register** on October 27, 2004 (69 FR 62721). The BIA held a public scoping meeting on November 15, 2004, in Madera, California. A Notice of Correction (NOC) was published in the **Federal Register** on April 6, 2005, to amend the October 2004 NOI to include a description of possible project alternatives and further extend the scoping comment period to May 6, 2005. A Notice of Availability for the Draft EIS (DEIS) was published in the **Federal Register** on February 15, 2008 (73 FR 8898). The DEIS was available for public comment from February 15 to March 31, 2008. The BIA held a public hearing on the DEIS on March 12, 2008, in the City of Madera.

Directions for Submitting Comments

Please include your name, return address and the caption, "FEIS Comments, North Fork Rancheria's Hotel/Casino, Fee-to-Trust Acquisition Project," on the first page of your written comments.

Public Availability of the FEIS

The FEIS is available for public review at the Madera County Public Library, 121 N. G. Street, Madera, California 93637; and at the Madera County Public Library, Chowchilla Branch, 300 Kings Ave., Chowchilla, California 93610. General information for the Madera County Public Library can be obtained by calling (559) 675–7871, and (559) 665–2630 for the Madera County, Chowchilla Branch. The FEIS is also available on the following Web site: *http://www.NorthForkEIS.com.*

To obtain a compact disk copy of the FEIS, please provide your name and address in writing or by voicemail to John Rydzik, Chief of the Division of Environmental, Cultural Resources Management and Safety, at the address listed in the **ADDRESSES** section of this notice, or at the telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Note: Individual paper copies of the FEIS will be provided only upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 20, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–19180 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Cloverdale Rancheria of Pomo Indians' Proposed 70-Acre Trust Acquisition and Resort Casino Project, Sonoma County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Cloverdale Rancheria of Pomo Indians (Tribe), National Indian Gaming Commission (NIGC), Environmental Protection Agency (EPA), California Department of Transportation (Caltrans), Sonoma County, and City of Cloverdale as cooperating agencies, intends to file a Draft Environmental Impact Statement (DEIS) with the EPA for the Tribe's proposed 70± acre Fee-to-Trust and Resort Casino Project to be located within Sonoma County, California, and that the DEIS is now available for public review and comment. This notice provides a 75-day public comment period and thereby grants an automatic 30-day extension to the normal 45-day public comment period.

DATES: The DEIS will be available for public comment beginning August 6, 2010. Written comments on the DEIS must arrive by October 20, 2010. A public hearing will be held on Thursday, September 16, 2010 from 6 p.m. to 9 p.m. or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Dale Morris, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825. The public hearing will be held at: Cloverdale City Citrus Fairgrounds, Citrus Fair Drive Number 1, Tea Room, Cloverdale, CA 95425. *See* **SUPPLEMENTARY INFORMATION** for locations where the DEIS will be available for review and instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6051.

SUPPLEMENTARY INFORMATION: The Tribe has requested the BIA to acquire six parcels, totaling 70± acres of land, on which the Tribe proposes to develop a destination resort casino. Approximately 2 acres of the site are located within the City of Cloverdale, California, while the remaining 68 acres are within unincorporated Sonoma County, California. The project site is situated immediately east of Highway 101 and borders Asti Road. Regional access to the project site is provided by Highway 101, with local access provided by South Cloverdale Boulevard via Highway 101. The proposed trust parcels partially overlap with the Tribe's historic Rancheria location.

The proposed action consists of: The fee-to-trust transfer of the project site; Federal review (by NIGC) of the development and management contract; and development of the proposed project. The proposed project includes: An 80,000 square-foot casino; 287,000 square-foot hotel with 244 rooms; 48,600 square-foot convention center; 28,100 square-foot entertainment center; 3,400 garage and surface parking spaces; and other ancillary facilities. A 20,000 square-foot tribal government building is proposed on the south end of the project site. Buildings would have a height of up to two stories above grade with the exception of the hotel and parking garage which would have a height of up to five stories above grade.

The BIA, serving as the lead agency for compliance with the National Environmental Policy Act (NEPA), published a Notice of Intent To Prepare the EIS for the proposed action in the **Federal Register** on July 7, 2008. (*See* 73 FR 38466). In addition to the Tribe, NIGC, EPA, Caltrans, Sonoma County, and the City of Cloverdale have accepted invitations to be cooperating agencies, as entities having jurisdiction by law or special expertise relevant to environmental issues.

BIA held a public scoping meeting on July 30, 2008, at the Cloverdale Citrus Fairgrounds in the City of Cloverdale, California. From that scoping meeting, a range of project alternatives were developed and subsequently analyzed in the DEIS, including: (1) Alternative A—Proposed Action; (2) Alternative B—Reduced Hotel and Casino; (3) Alternative C—Reduced Casino; (4) Alternative D—Casino Only; (5) Alternative E—Commercial Retail-Office Space; and (6) Alternative F—No Action Alternative. Environmental issues addressed in the DEIS include land resources; water resources; air quality; biological resources; cultural and paleontological resources; socioeconomic conditions; transportation; land use and agriculture; public services; noise; hazardous materials; visual resources; environmental justice; growth inducing effects, indirect effects; cumulative effects; and mitigation measures.

Directions for Submitting Comments

Please include your name, return address, and the caption: "DEIS Comments, Cloverdale Rancheria of Pomo Indians' Fee-to-Trust and Resort Casino Project," on the first page of your written comments and submit comments to the BIA address listed in the **ADDRESSES** section of this notice.

Availability of DEIS

The DEIS will be available to view at Cloverdale Regional Library, 401 North Cloverdale Boulevard, Cloverdale, CA 95425 and at the Santa Rosa Central Library, 211 E Street, Santa Rosa, CA 95404. General information for the Cloverdale Regional Library can be obtained by calling (707) 894–5271 and the Santa Rosa Central Library by calling (707) 545–0831. An electronic version of the DEIS can also be viewed at: *http://www.cloverdalerancheria.com/eis.html.* To obtain a compact disk copy of the DEIS, please provide your name and address in writing or by voicemail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public Comment Availability

Written comments, including the names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of NEPA of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 20, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–19186 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–GA0000–LVEMK09CK36; WYW172657]

Notice of Availability of the Record of Decision for the Environmental Impact Statement for the South Gillette Area Caballo West Coal Lease-by-Application, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Caballo West Coal Lease-by-Application (LBA) included in the South Gillette Area Coal Lease Applications Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/SouthGillette.html.* Paper copies of the ROD are also

available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming; and
- Bureau of Land Management, Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Tyson Sackett, Acting Wyoming Coal Coordinator, at 307–775–6487, or Ms. Mavis Love, Land Law Examiner, at 307–775–6258. Both Mr. Sackett and Ms. Love are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability (NOA) is for the Caballo West Coal Tract and addresses leasing Federal coal in Campbell County, Wyoming, administered by the BLM Wyoming High Plains District Office. The BLM approves Alternative 2, which is the preferred alternative of the South Gillette Area Coal Lease Applications EIS. Under Alternative 2, the Caballo West Coal LBA area, as modified by the BLM, includes 1,023.99 acres, more or less, and contains an estimated 130.2 million tons of mineable coal. The BLM will announce a competitive coal lease sale in the **Federal Register** at a later date. The Environmental Protection Agency published a **Federal Register** notice announcing the Final EIS was publicly available on August 17, 2009 (74 FR 41431).

This decision is subject to appeal to the Interior Board of Land Appeals (IBLA), as provided in 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register**. The ROD contains instructions for filing an appeal with the IBLA.

Donald A. Simpson,

State Director.

[FR Doc. 2010–19214 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

U.S. Coral Reef Task Force Public Meeting and Public Comment

[FWS–R9–IA–2010–N154; 6012PBD01 68]

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the U.S. Coral Reef Task Force (USCRTF) and a request for written comments. This meeting, the 24th biannual meeting of the USCRTF, provides a forum for coordinated planning and action among Federal agencies, State and territorial governments, and nongovernmental partners. Please register in advance by visiting the website under **SUPPLEMENTARY INFORMATION**. Advance public comment must be submitted by August 27, 2010, to Liza Johnson at the e-mail, fax, or mailing address listed below. This meeting has time allotted for sharing of in-person public comments, which must be submitted in written format by October 8, 2010.

ADDRESSES: World Resort Saipan, Susupe, Saipan, Commonwealth of the Northern Mariana Islands (*phone:* 670–234–5900).

DATES: Please be aware of the following dates:

- *Advance Public Comments:* Submit to Liza Johnson at the e-mail, fax, or mailing address listed below by August 27, 2010.
- *Tour on Guam:* Saturday, September 11, 2010.
- *All Meetings:* Registration is required prior to the meeting for all events associated with the meetings.
- *Steering Committee Meeting and Workshop:* Tuesday, September 14, 2010.
- *Meeting:* Wednesday, September 15 and Thursday, September 16, 2010.
- *Public Comments Given at the Meeting:* Submit in writing to Liza Johnson at the e-mail, fax, or mailing address listed below by October 8, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Gude, DOI (FWS) USCRTF Steering Committee Point of Contact, U.S. Department of the Interior, MS–3530–MIB, 1849 C Street NW., Washington, DC 20240 (*phone:* 202–208–6211; *fax:* 202–208–4867; *e-mail: Andrew_Gude@fws.gov*); or Liza Johnson, U.S. Coral Reef Task Force Department of the Interior Liaison, U.S. Department of the Interior, MS–3530–MIB, 1849 C Street NW., Washington, DC 20240 (*phone:* 202–208–1378; *fax:* 202–208–4867; *e-mail: Liza_M_Johnson@ios.doi.gov*); or visit the USCRTF Web site at *www.coralreef.gov*.

SUPPLEMENTARY INFORMATION: Established by Presidential Executive Order 13089 in 1998, the USCRTF has a mission to lead, coordinate, and strengthen U.S. government actions to better preserve and protect coral reef ecosystems. The Departments of Commerce and the Interior co-chair the USCRTF, whose members include leaders of 12 Federal agencies, 7 U.S. States and territories, and 3 freely associated States. For more information about the meetings, draft agendas, and how to register, go to *http://www.coralreef.gov*. A written summary of the meeting will be posted on the Web site within 2 months after the meeting.

Public Comments

Comments may address the meeting, the role of the USCRTF, or general coral reef conservation issues.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 3, 2010.

Laura Davis,

Associate Deputy Secretary, Department of the Interior.

[FR Doc. 2010–19511 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2010–N151]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Wednesday, September 8, 2010, from 8:30 a.m. to 5 p.m. (Central time). Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Monday, August 30, 2010, per instructions under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Hotel Allegro, 171 West Randolph Street, Chicago, IL 60601; telephone (312) 236–0123.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or via e-mail at *doug_hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting on Wednesday, September 8, 2010, from 8:30 a.m. to 5 p.m. (Central time).

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

The Council will convene to consider: (1) Issues for inclusion in the 2010 to 2012 Strategic Work Plan; (2) the Council's assessment of the Sport Fish Restoration Boating Access Program; (3) the Council's assessment of the Fish and Wildlife Service Fisheries Program; (4) the Council's assessment of the activities of the Recreational Boating and Fishing Foundation in implementing the Strategic Plan for the National Outreach and Communications Program, authorized by the 1998 Sportfishing and Boating Safety Act; and (5) other Council business. The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

Procedures for Public Input

Interested members of the public may submit relevant written or oral information for the Council to consider during the public meeting. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council.

Individuals or groups requesting an oral presentation at the public Council meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Douglas Hobbs, Council Coordinator, in writing (preferably via e-mail), by Monday, August 30, 2010 (*See* **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Written statements must be received by Wednesday, September 1, 2010, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). In order to attend this meeting, you must register by close of business Monday, August 30, 2010. Please submit your name, time of arrival, e-mail address and phone number to Douglas Hobbs. Mr. Hobbs' e-mail address is *doug_hobbs@fws.gov*, and his phone number is (703) 358–2336.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3103–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: July 27, 2010.

Wendi Webber,

Acting Deputy Director.

[FR Doc. 2010–19393 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N163]
[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before September 7, 2010. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by September 7, 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, along with the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*),[Doc regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Kyle Wildlife, Pipe Creek, TX; PRT-828861

The applicant requests reissuance of their permit authorizing interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from their captive herd for the purpose of enhancement of the survival of the species. This notice covers activities conducted under this permit for a period of 5 years.

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: James Hubbard, Alto, TX; PRT-08600A

Applicant: Robert Wegner, Sparks, NV; PRT-03156A

B. Endangered Marine Mammals and Marine Mammals

Applicant: Seattle Aquarium, Seattle, WA; PRT-10236A

The applicant requests a permit to import biological samples from northern sea otters (*Enhydra lutris kenyoni*) in Canada for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1–year period.

Applicant: U.S. Geological Survey, Alaska Science Center, Anchorage, AK; PRT-690038

The applicant requests an amendment to the permit to increase in the number of takes of polar bears (*Ursus maritimus*) and to conduct low-level aerial surveys for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5–year period for which the permit would be valid.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: July 30, 2010

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–19375 Filed 8–5–10; 8:45 am]

BILLING CODE S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000–2009–LL13100000–NB0000–LXSI016K0000]

Notice of Reestablishment of the Pinedale Anticline Working Group, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior (Secretary) has reestablished the Bureau of Land Management's (BLM) Pinedale Anticline Working Group (PAWG).

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, BLM Advisory Committee Lead (600), Bureau of Land Management, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 912–7434.

SUPPLEMENTARY INFORMATION: The purpose of the PAWG is to develop recommendations and provide advice to the BLM Field Manager on monitoring and mitigation issues pertinent to oil and gas development in the Pinedale Anticline Project Area.

Certification Statement: I hereby certify that the reestablishment of the PAWG is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Dated: August 3, 2010.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–19468 Filed 8–5–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 2, 2010 a proposed Consent Judgment in *United States* v. *B.C.F. Oil Refining Inc., et al.,* No. CV–05–0562, was lodged with the United States District Court for the Eastern District of New York.

The complaint was filed against B.C.F. Oil Refining Inc. ("B.C.F.") and Cary Fields on behalf of the Environmental Protection Agency ("EPA") pursuant to Section 107(a) of the Comprehensive Environmental

Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9607(a), in connection with the B.C.F. Oil Refining Superfund Site located at 360–362 Maspeth Avenue in Brooklyn, New York in Kings County, New York ("Site"). The United States alleged that Cary Fields was liable as an operator of the Site. The United States also filed a claim against the Site property pursuant to Section 107(l) of CERCLA, 42 U.S.C. 9607(l). The claims of the United States with respect to B.C.F. and the Site property were resolved through a Stipulation and Order Determining Liability Against Defendant B.C.F. Oil Refining Inc., entered by the Court on April 7, 2006. The Court entered judgment in favor of the United States and against B.C.F. on August 15, 2007.

The proposed Consent Judgment resolves claims of the United States on behalf of EPA under CERCLA in connection with the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), against Cary Fields ("Settling Defendant"). The Consent Judgment requires Settling Defendant to pay to the United States the total sum of $1,500,000 in payment for EPA's past response costs in connection with a removal action at the Site and accrued interest.

The proposed Consent Judgment provides that Settling Defendant is entitled to contribution protection as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2) for matters addressed by the settlement.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *B.C.F. Oil Refining Inc., et al.,* No. CV–05–0562 (E.D.N.Y.), D.J. Ref. 90–11–3–07172.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, 271 Cadman Plaza East, 7th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Judgment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–19443 Filed 8–5–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree With Hoosier Energy Rural Electric Cooperative, Inc. Under The Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on July 23, 2010, a proposed Consent Decree in *United States of America et al.* v. *Hoosier Energy Rural Electric Cooperative, Inc., ("Hoosier"),* Civil Action No. 1:10–cv–0935–LJM–TAB, was lodged with the United States District Court for the Southern District of Indiana.

In this civil enforcement action under the federal Clean Air Act ("Act"), the United States and the State of Indiana allege that Hoosier—an electric utility—failed to comply with certain requirements of the Act intended to protect air quality. The complaint alleges that Hoosier violated the Prevention of Significant Deterioration ("PSD") and Title V provisions of the Act, 42 U.S.C. 7401–7671 *et seq.,* and related state and federal implementing regulations, at the Merom Generating Station, a coal-fired power plant in Sullivan County, Indiana. The alleged violations arise from the construction of modifications at the power plant and operation of the plant in violation of PSD and Title V requirements. The complaint alleges that Hoosier failed to obtain appropriate permits and failed to install and apply required pollution control devices to reduce emissions of various air pollutants. The complaint seeks both injunctive relief and civil penalties.

The proposed Decree lodged with the Court addresses the Merom Station as well as Hoosier's Ratts Generating Station, a coal-fired power plant located in Pike County, Indiana. The proposed Decree requires installation, upgrading, and operation of certain pollution control devices at the Merom and Ratts plants on a schedule running through 2013. The settlement will reduce emissions of sulfur dioxide ("SO_2"), nitrogen oxides ("NO_X"), particular matter ("PM"), and sulfuric acid mist through emission control requirements and limitations specified by the proposed Decree. Hoosier will also fund environmental projects at a cost of at least $5 million to mitigate the alleged adverse effects of its past violations, and will pay a civil penalty of $950,00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Hoosier Energy Rural Electric Cooperative, Inc.,* D.J. Ref. 90–5–2–1–09864.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, located at 10 W. Market Street, Suite 2100, Indianapolis, Indiana 46204; or at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $22.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–19362 Filed 8–5–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 2, 2010.

The Department of Labor (DOL) hereby announces the submission of the following 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 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number)/e-mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax 202–395–5806 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Revision of a currently approved collection.

Title of Collection: Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721), Notice of Law Enforcement Officer's Death (CA–722).

OMB Control Number: 1240–0022.

Agency Form Number: CA–721 and CA–722.

Affected Public: Individuals or Households; Business or other for-profit; State, local or Tribal Government.

Cost to Federal Government: $184.00.

Total Estimated Number of Respondents: 13.

Total Estimated Number of Responses: 13.

Total Burden Hours: 17.

Total Hour Burden Cost (operating/maintaining): $6.

Description: The Federal Employees' Compensation Act (FECA) provides, under 5 U.S.C. 8191 *et seq.* and 20 CFR 10.735, that non-Federal law enforcement officers injured or killed under certain circumstances are entitled to the benefits of the Act, to the same extent as if they were employees of the Federal Government. The CA–721 and CA–722 are used by non-Federal law enforcement officers and their survivors to claim compensation under the FECA. Form CA–721 is used for claims for injury. Form CA–722 is used for claims for death. For additional information, see related notice published in the **Federal Register** on March 5, 2010 (Vol. 75 page 12272).

Dated: July 26, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–19397 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 2, 2010.

The Department of Labor (DOL) hereby announces the submission of the following 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 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number)/e-mail mail to: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax 202–395–5806 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Revision of a currently approved collection.

Title of Collection: Claim for Reimbursement of Benefit Payments and Claims Expense Under the War Hazards Compensation Act.

OMB Control Number: 1240–0006.

Agency Form Number: CA–278.

Affected Public: Business or other for-profit.

Cost to Federal Government: $111,288.00.

Total Estimated Number of Respondents: 269.

Total Estimated Number of Responses: 269.

Total Burden Hours: 135.

Total Hour Burden Cost (operating/maintaining): $557.

Description: The Office of Workers' Compensation Programs (OWCP) is the federal agency responsible for administration of the War Hazards Compensation Act (WHCA), 42 U.S.C. 1701 *et seq.* Under section 1704(a) of the WHCA, an insurance carrier or self-insured who has paid workers' compensation benefits to or on account of any person for a war-risk hazard may seek reimbursement for benefits paid (plus expenses) out of the Employment Compensation Fund for the Federal Employees' Compensation Act (FECA) at 5 U.S.C. 8147. Form CA–278 is used by insurance carriers and the self-insured to request reimbursement. The information collected is used by OWCP staff to process requests for reimbursement of WHCA benefit payments and claims expense that are submitted by insurance carriers and self-insureds. The information is also used by OWCP to decide whether it should opt to pay ongoing WHCA benefits directly to the injured worker.

For additional information, see related notice published in the **Federal Register** on March 15, 2010 (Vol. 75 page 12271).

August 2, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–19400 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 3, 2010.

The Department of Labor (DOL) hereby announces the submission of the following 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 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number) and e-mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax 202–395–5806 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Revision of a currently approved collection.

Title of Collection: Request for Earnings Information.

OMB Control Number: 1240–0005.

Agency Form Number: LS–276, LS–275–IC and LS–275–SI.

Affected Public: Business or other for-profit, Not-for-profit institution.

Cost to Federal Government: $14,992.52.

Total Estimated Number of Respondents: 572.

Total Estimated Number of Responses: 651.

Total Burden Hours: 436.5.

Total Hour Burden Cost (operating/maintaining): $169.52.

Description: The Longshore and Harbor Workers' Compensation Act (LHWCA) requires covered employers to secure the payment of compensation under the Act and its extensions by purchasing insurance from a carrier authorized by the Secretary of Labor to write Longshore Act Insurance, or by becoming authorized self-insured employers (33 U.S.C. 932 *et seq*). Each authorized insurance carrier (or carrier seeking authorization) is required to establish annually that its Longshore obligations are fully secured either through an applicable state guaranty (or analogous) fund, a deposit of security with the Division of Longshore and Harbor Workers' Compensation (DLHWC), or a combination of both. Similarly, each authorized self-insurer (or employer seeking authorization) is required to fully secure its Longshore Act obligations by depositing security with DLHWC. These requirements are designed to assure the prompt and continued payment of compensation and other benefits by the responsible carrier or self-insurer to injured workers and their survivors. Forms LS–276, Application for Security Deposit Determination; LS–275–IC, Agreement and Undertaking (Insurance Carrier); and LS–275–SI, Agreement and Undertaking (Self-insured Employer) are used to cover the submission of information by insurance carriers and self-insured employers regarding their ability to meet their financial obligations under the Longshore Act and its extensions. For additional information, see related notice published in the **Federal Register** on April 13, 2010 (Vol. 75 page 18887).

Dated: August 3, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–19406 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Proposals, Submissions, and Approvals

August 2, 2010.

ACTION: Submission for OMB Review; Comment Request.

The Department of Labor (DOL) hereby announces the submission of the following 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 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number)/and e-

mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax 202–395–5806 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (*see below*).

The OMB is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Revision of a currently approved collection.

Title of Collection: Medical Travel Refund Request.

OMB Control Number: 1240–0037.

Agency Form Number: CM–957.

Affected Public: Individuals or Households.

Cost to Federal Government: $971,231.

Total Estimated Number of Respondents: 182,535.

Total Estimated Number of Responses: 182,535.

Total Burden Hours: 30,301.

Total Hour Burden Cost (operating/maintaining): $85,791.

Description: The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP reimburse beneficiaries for travel expenses for covered medical treatment. In order to determine whether amounts requested as travel expenses are appropriate, OWCP must receive certain data elements, including the signature of the physician for medical expenses claimed under the BLBA. Form OWCP–957 is the standard format for the collection of these data elements. The regulations implementing these three statutes allow for the collection of information needed to enable OWCP to determine if reimbursement requests for travel expenses should be paid.

For additional information, see related notice published in the **Federal Register** on February 18, 2010 (Vol. 75 page 7292).

Dated: July 26, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–19398 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 2, 2010.

The Department of Labor (DOL) hereby announces the submission of the following 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 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number) e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Office of Workers' Compensation Programs (OWCP), Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax 202–395–5806 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (*see below*).

The OMB is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Revision of a currently approved collection.

Title of Collection: Energy Employees Occupational Illness Compensation Act Forms (various).

OMB Control Number: 1240–0002.

Form Numbers: EE–1, EE–2, EE–3, EE–4, EE–7, EE–8, EE–9, EE–10, EE–11A, EE–11B, EE–12, EE–13, EE–16 and EE–20.

Estimated Number of Respondents: 57,175.

Estimated Total Annual Burden Hours: 21,729.

Estimated Total Hour Burden Cost (operating/maintaining): $22,781.37.

Affected Public: Individuals or households; Business or other for-profit.

Description: The Office of Workers' Compensation Programs (OWCP) is the primary agency responsible for the administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.* The Act provides for timely payment of compensation to covered employees and, where applicable, survivors of such employees, who sustained either "occupational illnesses" or "covered illnesses" incurred in the performance of duty for the Department of Energy and certain of its contractors and subcontractors. The Act sets forth eligibility criteria for claimants for compensation under Part B and Part E of the Act, and outlines the various

elements of compensation payable from the Fund established by the Act. The information collections in this ICR collect demographic, factual and medical information needed to determine entitlement to benefits under the EEOICPA.

For additional information, *see* related notice published in the **Federal Register** on March 8, 2010 (Vol. 75 page 10504).

Dated: August 2, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–19399 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,065]

Trinity Tank Car, Inc., a Subsidiary of Trinity Industries, Inc., Plants #19, 1200, 1017, 1110 & 1194, Longview, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 23, 2009, applicable to workers of Trinity Tank Car, Inc., Plant #19, Longview, Texas. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7032).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of tank railcars.

The company official clarified that Trinity Industries, Inc. is the parent company of the subject firm.

Additional information also revealed that the production of tank railcars at Plant #19 was vertically integrated with the production of four other affiliate facilities in Longview, Texas: Plants #1200, 1017, 1110 and 1194. These other facilities operate in conjunction with Plant #19 in a vertically integrated production process and also experienced employment declines during the relevant period.

Based on these findings, the Department is amending this certification to also include workers from Trinity Tank Car, Inc., a subsidiary of Trinity Industries, Inc., Plants #1200, 1017, 1110 and 1194. The intent of the Department's certification is to include all workers employed at Trinity Tank Car, Inc., who were adversely affected by increased customer imports of tank railcars.

The amended notice applicable to TA–W–72,065 is hereby issued as follows:

All workers Trinity Tank Car, Inc., a subsidiary of Trinity Industries, Inc., Plants #19, 1200, 1017, 1110 and 1194, Longview, Texas who became totally or partially separated from employment on or after July 21, 2008, through December 23, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 23rd day of July 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–19391 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,668]

Swets Information Services, Operations Department, Information Technology Group, Marketing Group, Finance Group, Runnemede, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on May 18, 2010, applicable to workers of Swets Information Services, Operations Department, Runnemede, New Jersey. The notice was published in the **Federal Register** on June 7, 2010 (75 FR 32224). The subject workers are engaged in activities related to the supply of subscription services.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The data supplied to the Department by Swets Information Services during the investigation combined the Operations Department, Information Technology (IT) Group, Marketing Group and the Finance Group into one entity instead of identifying them separately and did not establish that workers within the IT, Marketing and Finance Groups support the Operations Department.

Accordingly, the Department is amending the certification to extend coverage to the workers of the IT, Marketing and Finance Groups who are engaged in the support of the Operations Department at the subject firm's Runnemede, New Jersey location.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the acquisition of subscription services from Singapore and Sri Lanka.

The amended notice applicable to TA–W–73,668 is hereby issued as follows:

"All workers of Swets Information Services, Operations Department, Information Technology Group, Marketing Group, and Finance Group, Runnemede, New Jersey, who became totally or partially separated from employment on or after March 9, 2009, through May 18, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–19388 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,430]

Douglas Battery Manufacturing Co., Currently Known as Lexington Road Properties, Inc., Including On-Site Leased Workers From Winston Personnel Group, Aerotek and Debbie Staffing, Winston-Salem, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 6, 2010, applicable to workers of Douglas Battery Manufacturing Co., including on-site leased workers from Winston Personnel Group, Aerotek, and Debbie Staffing, Winston-Salem, North Carolina. The notice was published in the **Federal Register** February 16, 2010 (75 FR 7036).

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. The workers are engaged in the production of automotive and industrial batteries.

New information shows that in January 2010, Douglas Battery Manufacturing was sold and is currently known as Lexington Road Properties, Inc. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account under the name Lexington Road Properties, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of automotive and industrial batteries.

The amended notice applicable to TA–W–72,430 is hereby issued as follows:

All workers of Douglas Battery Manufacturing Co., currently known as Lexington Road Properties, Inc., including on-site leased workers from Winston Personnel Group, Aerotek and Debbie's Staffing, Winston-Salem, North Carolina, who became totally or partially separated from employment on or after September 8, 2008 through January 6, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 21st day of July 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–19385 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,748]

New United Motor Manufacturing, Inc., Formerly a Joint Venture of General Motors Corporation and Toyota Motor Corporation, Including On-Site Leased Workers From Corestaff, ABM Janitorial, Toyota Engineering and Manufacturing North America, NPA Coatings, Inc., and Premier Manufacturing and On-Site Workers From Dupont Performance Coatings, Fremont, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on November 19, 2009, applicable to workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff, Fremont, California. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3938). The notice was amended on April 27, 2010, May 11, 2010 and June 24, 2010 to include on-site leased workers. The notices were published in the **Federal Register** on May 12, 2010 (75 FR 26794) May 21, 2010 (75 FR 28656–28657) and July 7, 2010 (75 FR 39045–39046), respectively.

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers assemble the Toyota Corolla and the Toyota Tacoma and used to assemble the Pontiac Vibe.

Information shows that workers from DuPont Performance Coatings were employed on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation. The Department has determined that these workers were sufficiently under the control of New United Motor Manufacturing, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers from DuPont Performance Coatings working on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation.

The amended notice applicable to TA–W–72,748 is hereby issued as follows:

All workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff, ABM Janitorial, Toyota Engineering and Manufacturing North America, NPA Coatings, Inc., Premier Manufacturing; and also on-site workers from DuPont Performance Coatings, Fremont, California, who became totally or partially separated from employment on or after October 29, 2008, through November 19, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 26th day of July, 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–19386 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,370]

Thomson Reuters Legal, Legal Editorial Operations, Cleveland Office, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through West Services, Inc., Independence, Ohio; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 22, 2010, applicable to workers of Thomson Reuters Legal, Legal Editorial Operations, Cleveland Office, Independence, Ohio. The notice was published in the **Federal Register** on July 7, 2010 (75 FR 39047).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to legal information and editorial services.

Information shows that some workers separated from employment at the Independence, Ohio location of Thomson Reuters Legal, Legal Editorial Operations, Cleveland Office had their wages reported under a separated unemployment insurance (UI) tax account under the name West Services, Inc., a Thomson Reuters Business.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in editorial services to the Philippines and India.

The amended notice applicable to TA–W–73,370 is hereby issued as follows:

All workers of Thomas Reuters Legal, Legal Editorial Operations, Cleveland Office, including workers whose unemployment insurance (UI) wages are paid through West Services, Inc., Independence, Ohio, who became totally or partially separated from employment on or after January 26, 2009

through June 22, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 27th day of July 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–19387 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of July 19, 2010 through July 23, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
72,700	The H.B. Smith Company, Inc., Leased Workers of Account Temps.	Westfield, MA	October 27, 2008.
72,726	U.S. Textile Corporation, Newland Division.	Newland, NC	October 21, 2008.
73,089	Talbar, Inc.	Meadville, PA	December 11, 2008.
73,205	Mr. Bruno & Canio, LTD	Brooklyn, NY	December 17, 2008.
73,236	Xcel Mold & Machine, Inc	North Canton, OH	January 4, 2009.
73,518	Airmate Company	Bryan, OH	February 16, 2009.
73,818	Endicott Interconnect Technologies, Inc., Detection & Imaging Systems.	Saxonburg, PA	March 26, 2009.
73,952	Genlyte Thomas Group, LLC	Fall River, MA	April 13, 2009.
74,076	Feng Sheng Garments, Inc.	San Francisco, CA	May 5, 2009.
74,197	Kincaid Furniture Company, Inc., Plant 1, Foothills Temporary Employment.	Hudson, NC	July 17, 2010.
74,197A	Kincaid Furniture Company, Inc., Corporate Office, Foothills Temporary Employment.	Hudson, NC	July 17, 2010.
74,198	Kincaid Furniture Company, Inc.,, Shipping Department; Leased Workers from Foothills Temporary Employment.	Hudson, NC	July 18, 2010.
74,199	Kincaid Furniture Company, Inc., Plant 9 Lumber Yard; Leased Workers from Foothills Temporary Employment.	Hudson, NC	July 18, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
72,494	Hewlett Packard, Electronic Data Systems, LLC; Enterprise Services Division; Leased Workers, etc.	Miramar, FL	October 2, 2008.
72,559	Symmetricom, Inc., Engineering Dept. and IT Dept., Leased Workers Albany Staffing and Office Team.	San Jose, CA	October 9, 2008.
72,746	Merkle-Korff Industries, Leased Workers from Furst Staffing and QTI Group.	Darlington, WI	October 21, 2008.
72,806	3M Company, Electronic Solutions Division, Leased Workers Volt Workforce Solutions.	Soquel, CA	November 3, 2008.
73,534	U.S. Natural Resources, Inc	Painesville, OH	February 1, 2009.
73,612	Weiman/Preview, A Division of Interlude Furniture, LLC.	Christiansburg, VA	February 22, 2009.
73,817	Meridian Automotive Systems	Detroit, MI	March 1, 2009.
74,046	Celestica, Inc., Leased Workers of Adecco Employment Services.	San Jose, CA	April 26, 2009.
74,227	DP/DHL, DHL Information Services (Americas), Leased workers Axway, Inc., Beeline, Cisco, Cognizant Tech Solutions, etc..	Scottsdale, AZ	August 11, 2008.
74,351	Anthem Insurance Companies, Inc., Subsidiary of Wellpoint, Inc., Admin Serv., Robert Half/ Accountemps, etc.	Mason, OH	July 1, 2009.
74,351A	Anthem Insurance Companies, Inc., Subsidiary of Wellpoint, Inc., Accounts Payable, etc., Robert Half.	Cincinnati, OH	July 1, 2009.

TA–W number	Subject firm	Location	Impact date
74,367	Sensata Technologies Inc., Customer Service Organization, Leased Workers from Olsten Staffing Services.	Attleboro, MA	June 30, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
72,465	BBI Enterprises Group, Inc	Holland, MI	September 30, 2008.
72,799	Chrome Craft Corporation, A Wholly Owed Subsidiary of Flex-N-Gate Chrome Corporation.	Highland Park, MI	November 6, 2008.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W number	Subject firm	Location	Impact date
74,115	Qwest Services Corporation and Qwest Communication Company, LLC, Business Marketing Group.	Seattle, WA.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W number	Subject firm	Location	Impact date
72,306	O'Bryan Bros., Inc	Chicago, IL.	
72,306A	O'Bryan Bros., Inc	New York, NY.	
72,486	Premcor Refining Group, Inc., Valero Energy Corporation; Valero Delaware City Refinery.	Delaware City, DE.	
72,693	Jim Walter Homes, Inc	Tampa, FL.	
72,828	Krieger-Ragsdale	Evansville, IN.	
73,235	ALD Thermal Treatment, Inc	Blythewood, SC.	
73,458	Chrysler Financial Services Americas, LLC, Finco Intermediate Holding Co., LLC, Troy Customer Contact Center.	Troy, MI.	
73,510	Liz Claiborne, Distribution Center	Lincoln, RI.	
73,654	Bose Corporation, California Avenue	Framingham, MA.	
73,756	Progressive Furniture, Inc., Leased Workers from Onin Staffing, a Subsidiary of Sauder Furniture.	Claremont, NC.	
74,106	Verisk Health	Cheshire, CT.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W number	Subject firm	Location	Impact date
74,004	Dixie Belle Textiles, Inc	Elkin, NC.	
74,302	Innatech LLC	Lebanon, OH.	
74,388	Computer Telephony Engineering Corporation.	Minnetonka, MN.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W number	Subject firm	Location	Impact date
72,982	Hewlett Packard, Working on-site at Ryder Logistics.	Indianapolis, IN.	
74,158	Cameron Surface Systems	Oklahoma City, OK.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W number	Subject firm	Location	Impact date
74,165	Trinity Tank Car, Inc., Plant #1194	Longview, TX.	
74,166	Trinity Tank Car, Inc., Plant #1110	Longview, TX.	
74,167	Trinity Tank Car, Inc., Plant #17	Longview, TX.	

I hereby certify that the aforementioned determinations were issued during the period of July 19, 2010 through July 23, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov*. These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: July 27, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–19389 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

152nd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 152nd open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on August 31–September 2, 2010.

The three-day meeting will take place in C–5515 Room 1–A, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 5 p.m. on August 31 and September 1, and from 8:30 a.m. to approximately 4 p.m. on September 2, with a one hour break for lunch, is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA). The EBSA update is scheduled for the afternoon of September 1, subject to change.

The Advisory Council will study the following issues: (1) Employee Benefit Plan Auditing and Financial Reporting Models, (2) Disparities for Women and Minorities in Retirement, and (3) Healthcare Literacy. The schedule for testimony and discussion of these issues generally will be one issue per day in the order noted above. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site, at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before August 23, 2010 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov*. It is requested that statements not be included in the body of the e-mail. Relevant statements received on or before August 23, 2010 will be included in the record of the meeting and posted on the Advisory Council page of the EBSA Web site. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All statements are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the statements received, as they are public records.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by August 23 at the address indicated.

Signed at Washington, DC, this 3rd day of August, 2010.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–19439 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2010–23, D–11500, Carle Foundation Hospital & Affiliates Pension Plan; 2010–24, D–11565, Citizens Bank Wealth Management, N.A.; and 2010–25, D–11602, State Street Bank and Trust Company (State Street); et al.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Carle Foundation Hospital & Affiliates Pension Plan, Located in Urbana, Illinois. [Prohibited Transaction Exemption 2010–23; Exemption Application No. D–11500]

Exemption

The restrictions in section 406(a)(1)(A) and (D) and section 406 (b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the sale of a certain limited partnership interest (the LPI) by the Carle Foundation Hospital & Affiliates Pension Plan (the Plan) to Carle Foundation Hospital (the Employer), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated third party;

(c) The sales price is the greater of: (1) The fair market value of the LPI as of the date of the sale, as determined by a qualified, independent appraiser, or (2) the Plan's total capital contributions as of the date of the sale, plus imputed earnings (calculated based upon the applicable one-month Treasury bill rates) from the date of the Plan's acquisition of the LPI to the date of the sale;

(d) The Plan pays no commissions, fees, or other expenses in connection with the sale; and

(e) The Plan fiduciaries review and approve the methodology used by the qualified, independent appraiser, ensure that such methodology is properly applied in determining the fair market value of the LPI, and also determine whether it is prudent to go forward with the proposed transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 15, 2010 at 75 FR 12305.

Written Comments

The Department received two written comments from participants of the Plan with respect to the notice of proposed exemption. One participant, a former employee, inquired how much longer she must wait to obtain a distribution of her remaining account balance. Another participant, who is a retiree and requested a hearing, also inquired about the distribution of her remaining account balance and expressed concern about lost investment opportunities and earnings.

The applicant responded that it intends to consummate the proposed sale of the LPI as soon as practicable following publication of a final exemption, if granted, in the **Federal Register**. Each affected participant will then receive his or her *pro rata* share of the cash proceeds from the sale of the LPI, as well as his or her *pro rata* share of the imputed earnings. Because the LPI is an illiquid investment (constituting less than one percent of total Plan assets) and the applicant was unable to identify an unrelated purchaser, it requested an administrative exemption from the Department to purchase the LPI from the Plan. The Department also notes that the grant of the exemption will facilitate the commenters' requested distribution, and the conditions, including the sales price formula described in condition (c), provide appropriate safeguards consistent with the requirements of section 408(a).

The Department has determined not to hold a public hearing. The Department's regulations provide that a hearing will be held where necessary to fully explore material factual issues identified by the person requesting the hearing. *See* 29 CFR 2570.46. In this case, the Department concludes that the commenter has not identified any material factual issues that would require a hearing.

Based upon the information contained in the entire record, the Department has determined to grant the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Citizens Bank Wealth Management, N.A., Located in Flint, Michigan. [Prohibited Transaction Exemption 2010–24; Exemption Application No. D–11565]

Exemption

Section I. Transaction

The restrictions of section 406(a)(1)(A) and (D) and section 406 (b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective December 16, 2008, to the past sale of certain Auction Rate Securities (ARS) by the Four-Way Tool & Die, Inc. Profit Sharing Plan and Trust (the Plan) to Citizens Republic Bancorp (Citizens Republic), a party in interest with respect to the Plan, provided that the following conditions were satisfied: [1]

(A) The subject ARS were acquired for the Plan by Citizens Bank Wealth Management, N.A. (the Trustee), acting in its capacity as trustee of the Plan, from an independent broker;

(B) The last auction for each of the ARS was unsuccessful;

(C) The sale of the ARS was directly between the Plan and Citizens Republic for solely cash consideration against prompt delivery of the ARS;

(D) The sale price for each of the ARS was equal to the par value, plus any accrued but unpaid interest;

[1] For purposes of this exemption, references to section 406 of the Act should be read to refer also to the corresponding provisions of section 4975 of the Code.

(E) The Plan did not waive any rights or claims in connection with the sale;

(F) The decision to sell the ARS to the Trustee was made by a Plan fiduciary independent of the Trustee;

(G) The Plan did not pay any commissions or transaction costs in connection with the sale;

(H) The sale was not part of an arrangement, agreement, or understanding designed to benefit a party in interest to the Plan;

(I) Upon termination of the Plan, the Plan participants received 100 percent of their account balances, and as a result of the pre-termination sale of the ARS to Citizens Republic at face value, plus any accrued but unpaid interest, no participant was adversely affected by the absence of an auction market for the ARS or the resulting decline in their market value;

(J) The Trustee and its affiliate, as applicable, maintain, or cause to be maintained, for a period of at least six (6) years from the date of the sale, such records as are necessary to enable the persons described in paragraph (K), below, to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to the Plan that engaged in the sale, other than the Trustee and its affiliate, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by paragraph (K); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the Trustee or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period; and

(K)(i) Except as provided in subparagraph (ii), below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (J), above, are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(b) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; or

(c) The employer of participants of the Plan, and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities;

(ii) None of the persons described above in paragraph (K)(i)(b) or (c) of shall be authorized to examine trade secrets of the Trustee, or commercial or financial information which is privileged or confidential; and

(iii) If the Trustee refuses to disclose information on the basis that such information is exempt from disclosure, the Trustee shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II. Definitions

For purposes of this exemption:

(A) The term "affiliate" means any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person (with respect to the Trustee, "affiliate" includes, but is not limited to, its parent corporation, Citizens Republic Bancorp)

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(C) The term "Auction Rate Securities" or "ARS" means securities that are debt instruments (generally with a long-term nominal maturity) with an interest rate that is reset at specific intervals through a Dutch Auction process;

(D) A person is "independent" of the Trustee if the person is (1) not the Trustee or an affiliate, and (2) not a "relative" (as defined in section 3(15) of the Act) of the party engaging in the transaction; and

(E) The term "Plan" means the Four-Way Tool & Die, Inc. Profit Sharing Plan and Trust, which is an employee benefit plan as defined in section 3(3) of the Act, and its related trust, which is an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act.

Effective Date: This exemption is effective as of December 16, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 8, 2010 at 75 FR 17966.

Written Comments

No comments were received by the Department with respect to the notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

State Street Bank and Trust Company (State Street), Located in Boston, MA. [Prohibited Transaction Exemption 2010–25; Exemption Application No. D–11602]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[2] shall not apply as of December 22, 2009 to the cash sale of certain fixed income securities (the Securities) for an aggregate purchase price of $113,977,880.15 by the Quality D Short-Term Investment Fund (the Fund) to State Street, a fiduciary with respect to the Fund and a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the sum of (1) the aggregate current amortized cost of the Securities as of the date of the transaction plus (2) the aggregate accrued interest on the Securities through the date of the transaction, calculated at the applicable contract rate for each of the Securities;

(c) The Fund did not bear any commissions, fees, transaction costs, or other expenses in connection with the sale;

(d) The amount received by the Fund with respect to each of the Securities was no less than the fair market value of each such Security, based upon the closing price obtained from an independent pricing service, as of the close of business on the date prior to the date of the transaction;

(e) State Street, as trustee of the Fund, determined that the sale of the Securities was appropriate for and in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(f) State Street took all appropriate actions necessary to safeguard the interests of the Fund and the Plans invested, directly or indirectly, in the Fund, in connection with the transaction;

(g) State Street and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a Plan which engages in the covered transaction, other than State Street and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by sections 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of State Street or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transaction, or any

[2] For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraphs (h)(1)(B)–(D) shall be authorized to examine trade secrets of State Street or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should State Street refuse to disclose information on the basis that such information is exempt from disclosure, State Street shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: This exemption is effective as of December 22, 2009.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 30, 2010 at 75 FR 22860.

FOR FURTHER INFORMATION CONTACT: Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of July, 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–19367 Filed 8–5–10; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions; D–11569, Sherburne Tele Systems, Inc.; and D–11597, John D. Simmons Individual Retirement Account; et al.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. *Attention:* Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "*moffitt.betty@dol.gov*", or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sherburne Tele Systems, Inc., 2008 Amended and Restated Employee Stock Ownership Plan and Trust (the "ESOP"), Located in Big Lake, Minnesota [Application No. D–11569]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and (D) and 406(b)(1) and 406(b)(2) of the Act and the sanctions imposed under section 4975 of the Code, by reason of sections 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the sale by the ESOP of all its shares of common stock (the "ESOP Shares") in Sherburne Tele Systems, Inc. (the "Company") to the Company, a party in interest with respect to the ESOP, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the ESOP as those that the ESOP could obtain in an arm's length transaction with an unrelated third party;

(c) The sales price is the greater of (i) $5.01 per share, or (ii) the fair market value of the ESOP Shares as of the date of the sale, as determined by a qualified, independent appraiser (the appraiser);

(d) The sales proceeds received by the ESOP pursuant to the transaction are valued at a share price that is greater than the share price received by the non-ESOP shareholders;

(e) The benefits received by the members of the board of directors and officers of the Company pursuant to the board of directors awards program, the Company's phantom stock plan and retention plans, which were paid, coincident with the closing of the asset sale of the Company to Iowa Telecommunications Services, Inc. were reasonable;

(f) A qualified, independent fiduciary (the "Independent Fiduciary") for the ESOP was and is responsible for (i) reviewing the terms of the sale of the Company's assets; (ii) engaging the appraiser to value the ESOP Shares; (iii) reviewing and, if appropriate, approving the methodology used by the appraiser, to ensure that such methodology is properly applied in determining the fair market value of the ESOP Shares, to be updated as of the date of the sale; (iv) negotiating the terms of the sale of the ESOP Shares to the Company to ensure that the ESOP participants receive at least the fair market value of the ESOP Shares; (v) determining, and documenting in writing, whether the terms of the sale are fair and reasonable to the ESOP and whether it is prudent to proceed with the proposed transaction; (vi) approving the proposed transaction; and (vii) determining whether the proposed transaction satisfies the criteria set forth in section 404 and section 408(a) of the Act;

(g) The ESOP pays no fees, commissions, or other expenses in connection with the sale (including the fees paid to the appraiser and the Independent Fiduciary), other than a one-time $500.00 escrow fee (as described in Summary of Facts and Representations #10); and

(h) The proceeds from the sale are promptly forwarded to the ESOP's trust simultaneously with the transfer of the ESOP Shares to the Company.

Summary of Facts and Representations

1. The ESOP was established by Sherburne Tele Systems, Inc. (the "Company" or the applicant) on January 1, 1999. As of December 31, 2009, the ESOP had 102 participants. The Company is the named fiduciary of the ESOP. The Company formerly operated as a sub-chapter "S" corporation in Big Lake, Minnesota, providing local and long distance telephone services to residential and business customers. The Company's assets were acquired in 2009, as described in Item 7, below.

According to the applicant, the ESOP had total assets of approximately $8,204,432.51, as of December 31, 2009; this amount includes $2,966,920.46 invested in money market funds and certificates of deposit, as well as 1,427,115 shares of the Company's stock (the "ESOP Shares") with a current value of $5,237,512.05, based upon the annual valuation of the ESOP assets performed by a qualified, independent appraiser.

2. The Company has only one class of stock. As of June 29, 2009, there were 14,436,920 shares of the stock issued and outstanding. Robert Eddy is the President of the Company and a member of the board of directors. Mr. Eddy owned, directly and indirectly, approximately 87% of the outstanding shares of the stock; he owned 6,262,772 shares directly. Mr. Eddy's sister, Jane Eddy Shiota, was the only other shareholder who directly owned more than 10% of the stock; she owned approximately 35.46% (5,120,123 shares) of the outstanding shares of the stock.[2] The 1,427,115 shares of stock owned by the ESOP represent a minority interest in the Company of 9.89%.

3. The background to the ESOP's acquisition of the Company stock is as follows. The applicant represents that, on September 15, 1999, the ESOP acquired 285,423 shares of the stock at $9.81 per share, the fair market value of the stock as of that date, as determined by the ESOP's trustees, based upon a report by a qualified, independent appraiser, Chartwell Business Valuation, LLC (doing business as Chartwell Capital Solutions) ("Chartwell").[3] The total price for the stock purchased on September 15, 1999 was $2,799,999.63, which was financed in the form of an exempt loan (the "Exempt Loan").

The Company approved a five-to-one split of its stock, effective November 3, 2005, which increased the shares of stock held by the ESOP from 285,423 shares to 1,427,115 shares. In 2007, the ESOP repaid the Exempt Loan in full, in advance of the amortized payment schedule under the loan agreement, and allocated the remaining ESOP Shares held in the ESOP's suspense account to the ESOP participant accounts.

The ESOP received income distributions from the Company with respect to the ESOP Shares in the following amounts: $19,647.92 (1999); $176,447.15 (2000); $66,638.00 (2001); $14,139.00 (2002); $11,479.00 (2003); $33,917.00 (2004); $54,852.00 (2005); $373,238.00 (2006); $5,651,375.40 (2007); and $841,997.85 (2008). There were no expenses charged to participant accounts in connection with holding the ESOP Shares.

4. The applicant represents that, after reviewing the strategic alternatives, the Company's board of directors decided that a sale of the Company was in the best interests of its shareholders. In October 2007, the Company retained the services of Green Holcomb & Fischer, LLC, an investment banking firm, to find a buyer.

Due to a potential sale of the Company, Barnes & Thornburg LLP, counsel to the Company (specifically, with regard to its ESOP matters), advised the Company to engage First Bankers Trust Services, Inc. (FBTS), a discretionary trustee, to serve as an independent fiduciary (the "Independent Fiduciary") for the ESOP in order to avoid any conflict of interest or appearance of impropriety.[4] As set forth in the July 22, 2008 retainer agreement, FBTS, as the sole discretionary trustee of the ESOP, agreed to "exercise all duties, responsibilities, and powers of a fiduciary under ERISA in its capacity as a discretionary trustee. * * *" As such, FBTS' responsibilities, in addition to other traditional trustee responsibilities, were (i) to exercise its exclusive discretion as trustee and make its independent decision concerning any transaction that may arise or occur under the ESOP, and (ii) to control the management and disposition of the assets held by the ESOP trust. FBTS represents that, pursuant to its retainer agreement, FBTS' responsibilities included: (i) Negotiating a fair transaction in which the ESOP participants would receive no less than fair market value for their Company stock as of the closing date of the transaction; (ii) reviewing an appraisal of the Company stock, which was prepared by an independent, qualified appraiser, and updated as of the closing date of the transaction; (iii) evaluating the sufficiency of the methodology of such appraisal; and (iv) determining the reasonableness of the conclusions reached in such appraisal.

5. It is represented that FBTS is a state chartered trust company that has been specializing in employee benefits as an independent trustee for over twenty years and that, at all times, FBTS has been and continues to be represented by its own counsel, Krieg Devault. Prior to its engagement as the discretionary trustee for

[1] For purposes of this proposed exemption, references to provisions of Title I in the Act, unless otherwise specified, should be read to refer also to the corresponding provisions of the Code.

[2] The non-ESOP shareholders besides Mr. Eddy and Ms. Shiota, some of whom are relatives to Mr. Eddy, are as follows: Rolland K. Eddy and Donna L. Eddy Trust (1,137,116 shares); Eric R. Morales (485,750 shares); and Fred I. Shiota, Sr. (4,044 shares).

[3] The Department expresses no opinion herein as to whether the ESOP paid "adequate consideration" for its initial purchase of the Company stock.

[4] FBTS represents that it is not acting as an "investment manager" within the meaning of section 3(38) of the Act because such section specifically excludes trustees.

the ESOP, FBTS had no relationship with the Company. Moreover, FBTS and its wholly-owned subsidiaries derived less than 1% of its consolidated gross income from the Company and its affiliates for the years ending December 31, 2008 and through May 4, 2010. In addition, FBTS represents that it has no relationship with Green Holcomb & Fischer, LLC.

6. In regard to its qualifications, FBTS states that the firm has four offices nationwide and 30 full-time employees devoted to providing trust services for over 600 account relationships. FBTS maintains that its professional staff has in-depth knowledge of Internal Revenue Service and Labor Department regulations and compliance requirements for all types of retirement plans.

Kimberly Serbin, a senior trust officer with FBTS since 2001, is one of FBTS' employees responsible for providing trust services to the ESOP; she has an insurance license, and her past work experience includes manufacturing, investment/financial services, insurance services, and banking. In a letter dated June 18, 2009, Ms. Serbin asserts that FBTS is well qualified to review appraisals in connection with the sale of the ESOP Shares. She states: "In the last three years, FBTS has served as an independent transactional trustee for approximately 15–20 transactions in which the sale of stock by an employee benefit plan has occurred. The circumstances have usually been in connection with the sale of the plan sponsor (either a stock sale or an asset sale) or in connection with the termination of an employee benefit plan by the plan sponsor."

7. On or about November 21, 2008, the Company and its subsidiaries and all non-ESOP shareholders executed an Asset Purchase Agreement (the "Purchase Agreement"), which provided for the sale of substantially all of the assets of the Company and its subsidiaries to Iowa Telecommunications Services, Inc. ("ITSI"). The asset sale closed on June 30, 2009, and the final purchase price paid was approximately $82 million due to certain terms and conditions that allowed for adjustment to the purchase price based on changes in the Company's operations. The Purchase Agreement required that the Company "terminate" the ESOP immediately prior to the closing of the asset sale, which occurred on June 30, 2009.[5] Although the ESOP was "frozen" as of the same date, it continues to hold the ESOP Shares in trust.[6] It is represented that ITSI is not affiliated with any party in interest to the proposed exemption transaction, (*i.e.,* the sale of the ESOP Shares to the Company (the "ESOP Transaction")).

8. Because the ESOP was a minority shareholder of the Company, it did not have the authority to delay the asset sale that occurred on June 30, 2009. Prior to the sale, however, the Independent Fiduciary negotiated a Stock Redemption Agreement (the "Redemption Agreement") on May 26, 2009 with the Company and Robert Eddy, in his individual capacity and in his capacity as majority shareholder representative, providing for a sale of all of the ESOP Shares to the Company. Under the terms of the Redemption Agreement, the consummation of the ESOP Transaction is contingent upon first obtaining a prohibited transaction exemption from the Department.[7]

9. Prior to the anticipated sale of the Company's assets, the Company applied for authorization by the Department, pursuant to class Prohibited Transaction Exemption (PTE) 96–62, for the one-time cash sale by the ESOP of 100% of the ESOP Shares to the Company, a party in interest to the ESOP. Because the Company was notified by the Department in June 2009 that it would not qualify for authorization pursuant to PTE 96–62, it has requested an individual prohibited transaction exemption.

10. As a result, the cash value of the ESOP Shares, attributable to the sale of the Company's assets, is currently held in an escrow account, subject to the final closing of the Redemption Agreement, which is pending until the grant of the requested exemptive relief.[8] Wells Fargo Bank, National Association is the escrow agent. It is represented that the funds in the escrow account are invested in a money market account. There was a one-time escrow fee of $500.00 paid from the earnings on the escrowed funds and no other fees.

11. The applicant represents that the terms and conditions of the proposed ESOP Transaction are at least as favorable to the ESOP as those that the ESOP could obtain in an arm's length transaction with an unrelated third party. A fairness opinion, the ESOP Closing Valuation and Opinion, was prepared and issued on July 2, 2009 by Chartwell for the Independent Fiduciary, concerning the proposed sale of the ESOP Shares to the Company for adequate consideration. FBTS engaged Chartwell to perform this appraisal of the ESOP Shares pursuant to their January 26, 2009 retainer agreement. The Company has confirmed that the financial projections shared with Chartwell are identical with those shared with FBTS, other lenders and ITSI. As previously noted in Item 3, above, Chartwell is represented to be a qualified, independent appraiser and has performed the ESOP's annual stock valuations to date. It is represented that Chartwell derived less than 1% of its annual gross income from the Company and its affiliates for the years ending December 31, 2007 and December 31, 2008. It is further represented that Chartwell derived less than 3% of its annual gross income from the Company and its affiliates for the year ending December 31, 2009 and will derive no income from the Company and its affiliates for the year ending December 31, 2010.

12. The applicant represents that Chartwell is a nationally recognized financial services firm located in Minneapolis, Minnesota, serving privately held companies and their shareholders. The firm focuses on business valuation and transaction consulting and has provided opinions and advisory services to hundreds of organizations in a variety of industries, including over 150 ESOPs throughout the United States. The individuals involved in the July 2, 2009 appraisal of the ESOP Shares were Paul J. Halverson, Managing Director, and Matthew R. Schubring. Mr. Halverson is an Accredited Senior Appraiser, a Certified Business Appraiser, and a member of the American Society of Appraisers and the Institute of Business Appraisers, who has provided financial advisory services to privately-held companies since 1987; a substantial portion of his work relates to ESOPs and providing independent financial advisory services to ESOP trustees and other corporate fiduciaries. Mr. Schubring is an Accredited Senior Appraiser who has provided valuation services since 1999 and also has extensive valuation experience with ESOPs, buy/sell agreements, and other corporate matters.

13. It is represented that the methodologies used by Chartwell to evaluate the fairness of the proposed sales price are uniformly accepted and approved for valuing companies of the size and within the industry of the Company and took into consideration all known and relevant facts and circumstances attendant to the proposed ESOP Transaction. Chartwell represents that it valued the ESOP Shares using the merger and acquisition method of the market approach. Chartwell states, "In the merger and acquisition method, the sales of entire companies or large blocks of companies are analyzed to determine appropriate valuation multiples for the subject company. In this case, the sale of the subject company presented the best indication of fair market value under this method. Based upon our knowledge of the diligence of the transaction process undertaken by the Company and the

[5] Counsel for FBTS explained that as a technical matter the ESOP has not yet "terminated." Rather, according to the counsel, a "partial termination" of the ESOP occurred, for purposes of the Internal Revenue Code, because the employees of the Company were terminated from employment and, generally were re-hired by ITSI. Because of the "partial termination," counsel for FBTS represented that participants are 100% vested in their account balances.

[6] The Department notes that, as the ESOP Transaction has not yet been consummated, the ESOP Shares are "plan assets" subject to the requirements of, among other things, Part 4 of Title I in the Act.

[7] In general, the applicant notes that section 408(e) of the Act provides a statutory exemption for the sale of qualifying employer securities (QES) by an individual account plan to a party in interest. Section 408(d) of the Act, however, excludes from this exemption transactions involving an individual account plan and (i) any person who is an owner-employee with respect to the plan, (ii) a family member of such owner-employee, or (iii) any corporation of which such owner-employee owns 50 percent or more of the combined voting stock of the corporation. Thus, section 408(d) excludes any transaction between the ESOP and the Company because Mr. Eddy, an owner-employee of the Company, owns 50% or more of the combined voting stock of the Company. The Taxpayer Relief Act of 1997 granted some relief to subchapter "S" corporations that maintain ESOPs. Specifically, section 408(d)(2)(B) of the Act provides an exemption for sales of QES to an ESOP by an owner-employee, a family member of such owner-employee, or related Subchapter "S" corporation. It does not, however, exempt a sale *by* an ESOP to such parties.

[8] The Department is not expressing an opinion whether the cash equivalent of the value of the ESOP Shares held in the escrow account are "plan assets" subject to the requirements of Part 4 of Title I in the Act.

results of these efforts we believe that the value received by the non-ESOP shareholders represents the best indication of fair market value of the Company. Because this represented the actual fair market value and not theoretical values indicated by the income, guideline public company or asset approaches we chose to rely on the merger and acquisition method." As a condition of the proposed exemption, Chartwell will update the appraisal of the ESOP Shares as of the date of the ESOP Transaction.

14. The Independent Fiduciary not only evaluated the Chartwell appraisal of the ESOP Shares, it also negotiated the Redemption Agreement with the Company for the sale of ESOP Shares. It is represented that, over the course of several months, FBTS negotiated vigorously on behalf of the ESOP to receive the sales price of $5.01 per share rather than participating in the liquidating distribution from the available net asset proceeds, alongside the non-ESOP shareholders. In other words, according to FBTS' counsel, the Redemption Agreement allows the ESOP to avoid being subject to, among other things, potential indemnification liabilities and certain other expenses that FBTS determined should not be borne by the ESOP. Thus, the negotiation resulted in the ESOP receiving a sales price of $5.01 per share rather than the estimated $4.64 per share that would be received by the non-ESOP shareholders of the Company under the terms of the Purchase Agreement with ITSI.[9] The $5.01 per share price will be paid in cash upon closing of the ESOP redemption.

By way of further explanation, the total per share proceeds from the asset sale of the Company to ITSI came to $5.68 per share, but this amount was reduced to the putative $4.64 per share after taking into account various payments that the Company intended to make. The Independent Fiduciary believed that the ESOP participants' benefits should not be reduced by certain post-sale payments that the Company was making, which the ESOP had no control over, including: Certain awards to members of the Company's board of directors and officers (some of whom are also shareholders) for completing the sale of the Company's assets; S-corporation insurance; and amounts due under the Company's phantom stock plan and retention agreements.[10]

Based on the sales price of $5.01 per share, the ESOP will realize in the aggregate approximately $7,149,846.15 on the sale of the 1,427,115 ESOP Shares, which constitute approximately 71% of the total assets of the ESOP. It is represented that the Independent Fiduciary reviewed the Purchase Agreement, the Redemption Agreement, and the ESOP Closing Valuation and Opinion and determined that the ESOP Transaction would be in the best interests of the ESOP participants. The Independent Fiduciary, on behalf of the ESOP, reviewed and approved the valuation methodology used by Chartwell, ensured that such methodology was properly applied in determining the fair market value of the ESOP Shares, and determined that the terms of the sale are fair and reasonable to the ESOP. The Independent Fiduciary also will determine whether it is prudent to go forward with the ESOP Transaction.

15. The applicant represents that the sale of the ESOP Shares for cash pursuant to the terms of the Redemption Agreement is in the best interests of the ESOP and its participants because, in addition to the reasons given by the Independent Fiduciary, above, it will allow participants to diversify their investments. Except for the one-time $500.00 escrow fee, as described in Item 10, above, which was paid from earnings on the ESOP's share of cash proceeds derived from the asset sale of the Company to ITSI and held pursuant to an Escrow Agreement between Wells Fargo Bank and FBTS, the ESOP will not be responsible for any fees, commissions, or other expenses that may be associated with the sale of the ESOP Shares—including the cost of filing the exemption application, notifying interested persons, and engaging Chartwell and FBTS. The sale proceeds will be credited to the ESOP's trust simultaneously with the transfer of title of the ESOP Shares to the Company, and each participant's individual account will receive its *pro rata* share of the sale proceeds.

16. In summary, the applicant represents that the ESOP Transaction meets the statutory criteria of section 408(a) of the Act because, among other things: (a) The ESOP Transaction will be a one-time transaction for cash; (b) the sales price for the ESOP Shares will be the greater of (i) $5.01 per share, or (ii) the fair market value of the ESOP Shares as of the date of the sale, as determined by Chartwell; (c) FBTS was and is responsible for (i) reviewing the terms of the sale of the Company's assets; (ii) engaging Chartwell to value the ESOP Shares; (iii) reviewing and approving the methodology used by Chartwell to ensure that such methodology is properly applied in determining the fair market value of the ESOP Shares, to be updated as of the date of the sale; (iv) negotiating the terms of the ESOP Transaction to ensure that the ESOP participants receive at least the fair market value of the ESOP Shares; and (v) determining whether the terms of the sale are fair and reasonable to the ESOP and whether it is prudent to go forward with the ESOP Transaction; and (e) the ESOP will pay no fees, commissions, or other expenses in connection with the sale (including the fees paid to the independent appraiser and the Independent Fiduciary), other than a one-time $500.00 escrow fee.

[9] Of the $4.64 per share value received by non-ESOP shareholders, $3.65 per share was paid upon closing, $0.75 per share was placed in a separate escrow account to be released 18 months following the closing, and the remaining proceeds (*i.e., approximately* $0.23 per share) are expected to be distributed after finalizing all transaction costs. The administrative file refers to the $4.64 per share amount even though the sum of the three amounts equals $4.63. The Department assumes that the discrepancy is attributable to it being an estimated amount.

[10] For example, FBTS determined that it was not appropriate, in an asset acquisition, for the ESOP to bear the allocable cost of S-corporation insurance, which apparently ITSI required the Company to pay in the event the Internal Revenue Service made a determination that the Company's S-corporation's tax status election was improper and resulted in the assessment of additional taxes.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

John D. Simmons Individual Retirement Account (the IRA), Located in West Chester, PA, [Application No. D–11597]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975(c)(1)(A)–(E) of the Code, shall not apply to the proposed sale (the Sale) by the IRA to John D. Simmons, (the Applicant) a disqualified person with respect to the IRA,[11] of a 50 percent interest (the Interest) in a condominium (the Condo); provided that the following conditions are satisfied:

(a) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) As consideration, the IRA receives the lesser of $192,500 or the fair market value of the Interest as determined by a qualified, independent appraiser in an updated appraisal on the date of Sale; and

(d) The IRA pays no commissions, costs, fees, or other expenses with respect to the Sale.

Summary of Facts and Representations

1. The Applicant is an attorney residing in West Chester, Pennsylvania. In August 2008, the Applicant established the IRA because it permitted self-directed purchases of real property and other non-stock investments. The Applicant then transferred approximately $195,000 from various mutual funds held by his rollover individual retirement account with Vanguard to the IRA. As of January 4, 2010, the IRA had total assets of $195,189.74. Entrust MidAtlantic, LLC, the directed trustee of the IRA, is based in Frederick, Maryland.

2. Rose Marie Simmons (Mrs. Simmons) is the mother of the Applicant and a disqualified person with respect to the IRA. Mrs. Simmons resides in Millsboro, Delaware. Mrs. Simmons formerly owned investment real property in Drexel Hill, Pennsylvania (the Drexel Property) which was about 125 miles from her home in Southern Delaware. Mrs. Simmons had difficulty with her Drexel Property tenants and required the Applicant's assistance in subsequent eviction proceedings against such tenants. In August 2008, Mrs. Simmons sold the Drexel Property to one of her neighbors.

3. During 2008, the Applicant sought to diversify his IRA's holdings into non-equity investments in light of the waning economy. So, he decided to invest one-half of his tax-

[11] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

favored retirement holdings in alternative investments, such as real property. As discussed above, Entrust MidAtlantic, LLC allows IRA owners to invest in real property. The Applicant also represents that he and Mrs. Simmons desired to purchase a long term investment property together for well below its value, and wait for it to increase in value as market conditions improved. Moreover, Mrs. Simmons wished to reside closer to her investment property so that she could inspect it more frequently than she could the Drexel Property.

Thus, on October 6, 2008, the IRA and Mrs. Simmons incorporated Beach Rent, LLC in Delaware, described in detail below, to act as an investment property manager. In the same month, the Applicant found the Condo, located at 1609 Coastal Highway, Dewey Beach, Delaware. The Condo, which is Unit S204, was listed for $399,900 in the Opal Condominiums Complex (the Opal). The Applicant represents that in comparison, similar two-bedroom units in the Opal, had sold for approximately $500,000 to $550,000 in 2006. Additionally, the Condo is located approximately 30 miles from Mrs. Simmons' residence.

4. On October 17, 2008, the IRA and Mrs. Simmons purchased the Condo for $384,500. The IRA's Interest and Mrs. Simmons' 50 percent interest in the Condo each equaled $192,250.00. Both the IRA and Mrs. Simmons paid cash for their respective interests in the Condo from the Opal Dewey Beach, LLC, an unrelated party. Mrs. Simmons used the proceeds from the sale of the Drexel Property to purchase her 50 percent interest in the Condo pursuant to a tax-favored exchange under section 1031 of the Code. Currently, the IRA's Interest in the Condo accounts for 98 percent of the IRA's total value.

5. The IRA and Mrs. Simmons are named as the managing members of Beach Rent, LLC. The Applicant acts as its uncompensated manager. Beach Rent, LLC, which was created to simplify the bookkeeping of the rents and bills, is a flow-through tax entity intended to pass profits (*i.e.,* rental income) received by the Beach Rent, LLC to the IRA and Mrs. Simmons based on their respective ownership interests in the Condo. Both Mrs. Simmons and IRA each own 50 percent of the shares of Beach Rent, LLC. For the years 2008 and 2009, the Condo's total rental income was $13,400 and total expenses have been $12,128. In these years, the IRA's share of total income was $6,700 and total expenses were $6,064. Thus, the IRA's net acquisition cost for the Interest is $191,864 [$192,500 (purchase price) + $6,064 (expenses)—$6,700 (income)].

6. Beach Rent, LLC is responsible for renting and maintaining the Condo. Beach Rent, LLC deducts expenses, such as insurance, taxes, Opal condominium fees, cleaning service fees, cable and utilities, against the income generated from the seasonal rentals. During the off-season, Beach Rent, LLC pays for the maintenance of the Condo.

Since 2008, neither the Applicant nor Mrs. Simmons nor any other disqualified person has stayed at the Condo. Since its acquisition by the IRA and Mrs. Simmons, the Applicant and Mrs. Simmons periodically visit the Condo for inspections and repairs, including installing furniture and window treatments. Neither the Applicant nor Mrs. Simmons have been compensated by the IRA for the services rendered to the Condo. As far as the Condo's furnishings and electronics are concerned, Mrs. Simmons has either purchased or contributed them to the Condo.

7. Beach Rent, LLC advertises for Condo renters on the Internet. At one time, Mrs. Simmons and the Applicant used Ocean Sothesby Realtors, which is not a related party, to locate renters. However, the Applicant represents that using Beach Rent, LLC to find renters has been more cost effective. On or about Memorial Day, Beach Rent, LLC typically begins renting the Condo for the beach season. Stays vary in price from a three-day stay at $600 up to a weekly rate for $1,500 plus a refundable $350 security deposit. A deposit of half the rent plus the security deposit is due a month prior to the rental and the other half is due at signing. Beach Rent, LLC refunds the security deposit 14 days after a rental if its cleaning service confirms the Condo is in good condition. For the 2008 and 2009 rental seasons, the Condo has been rented a total of 11 times to unrelated parties.

8. The Applicant represents that he and Mrs. Simmons thought the Condo would be a good investment because they believed the housing market would rebound more quickly than it has to date and there would be a substantial increase in the IRA's equity holding in the Interest. Since 2008, the Applicant explains that the Opal Dewey Beach, LLC has been unable to sell the remaining 7 condominium units out of the original 36 in the Opal. The unsold units are currently being rented for less than fair market value. Additionally, the Applicant states that a bank-owned two-bedroom unit in the Opal failed to sell for its short sale price of $290,300 in May 2010 at a sheriff's auction. This property had originally sold for $547,000 in October 2006. Thus, the Applicant believes there is the possibility that the IRA could face future equity losses in the Condo and that any equity improvement may not occur for a long time. Further, the Applicant states that, the IRA's current rate of return is low. In this regard, the Applicant projects the Condo's total 2010 rentals will be $15,000 and total expenses will be $9,500, with a profit of $5,500. Accordingly, the IRA's rate of return for its $192,500 Interest will be approximately 1.4 percent per annum (($5,500 *.5)/$192,500).

Because of these events, the Applicant proposes to purchase the Interest from the IRA in order that his IRA's assets can be placed in investments yielding higher rates of return. Due to the joint ownership of the Condo, the Applicant explains that a Sale of the Interest to an unrelated party would be unduly burdensome and unreasonable, such Sale and would likely force the IRA to offer a discount for the Interest. In the alternative, the Sale avoids forcing Mrs. Simmons to sell her 50 percent interest in the Condo during down market conditions because her interest would be sold during a down market at a discounted price. Although the Applicant believes that there will be an equity improvement in 10–15 years, he states that the short-term returns are too low for a tax-deferred investment and the IRA needs to divest itself of the Interest as soon as possible. Accordingly, the Applicant requests an administrative exemption from the Department.

9. The Sale will be a one-time cash transaction. The terms will be at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party. The IRA will receive no less than the fair market value for the Interest, as determined by a qualified, independent appraisal on the date of the Sale. Further, the IRA will pay no commissions, costs, or other expenses in connection with the Sale. Following the Sale, Beach Rent, LLC will be dissolved and its assets will be distributed to the IRA and Mrs. Simmons.

10. The Applicant retained R. Stephen White of First State Appraisal, Inc. of Rehoboth Beach, Delaware to appraise the Condo. Mr. White is licensed in the State of Delaware as a certified residential real property appraiser. During 2009, he received less than one percent of his income from services provided to the Applicant and related parties, including Mrs. Simmons.

In an appraisal report dated September 17, 2009 (the Appraisal), Mr. White compared the Condo in an "as is" condition with six other two-bedroom condominium sales in Dewey Beach and Rehoboth Beach, Delaware using the Sales Comparison Approach to valuation. Also as of September 17, 2009, Mr. White valued the Condo at $385,000. Mr. White will update the Appraisal on the date of Sale. Accordingly, the Applicant represents that the Interest is valued at $192,500.00 ($385,000 × 50 percent).

11. The Applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The terms and conditions of the Sale will be at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) As consideration, the IRA will receive the lesser of $192,500 or the fair market value of the Property as determined by a qualified, independent appraiser in an updated appraisal on the date of Sale; and

(d) The IRA will pay no commissions, costs, fees, or other expenses with respect to the Sale.

Notice to Interested Persons

Because the Applicant is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of July 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–19368 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,174]

General Electric Company, Transportation Division, Including On-Site Leased Workers From Adecco Technical, Erie, PA; Notice of Revised Determination on Remand

On April 15, 2010, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's (Department's) motion for voluntary remand for further investigation in *Former Employees of General Electric Company, Transportation Division, Erie, Pennsylvania* v. *United States,* Case No. 10–00076. Further, on June 3, 2010, the USCIT remanded *United Electrical, Radio and Machine Workers of America, Local 506* v. *United States,* Case No. 10–00108, to the Department for further review. The two cases were consolidated on the same date under Case No. 10–00076.

On June 10, 2009, former workers of General Electric Company, Transportation Division (hereafter referred to as the subject firm) filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers of General Electric Company, Transportation Division, Erie, Pennsylvania (hereafter referred to as the subject facility). On July 1, 2009, United Electrical, Radio and Machine Workers of America, Local 506 (UE 506), also filed a petition for TAA on behalf of workers at the subject facility. The UE 506 petition was consolidated with the petition filed on June 10, 2009, as it covered the same worker group.

The initial investigation revealed that, during the period under investigation, workers at the subject facility, including on-site leased workers from Adecco Technical (hereafter referred to as the subject worker group) were engaged in the production of locomotives, locomotive kits, and propulsion and specialty parts. The findings of that investigation revealed that there had been a significant number or proportion of workers at the subject facility that was totally or partially separated from employment.

It was determined, however, that imports of articles like or directly competitive with those produced by the subject firm did not contribute importantly to worker separations at the subject facility and that the subject firm did not shift production to a foreign country. A survey of the subject firm's major declining domestic customers revealed decreasing imports of articles like or directly competitive with those produced by the subject worker group, both in absolute terms and relative to the production at the subject facility.

Consequently, the Department determined that the subject worker group could not be considered import impacted, and a negative determination regarding the subject worker group's eligibility to apply for TAA was issued on October 8, 2009. The Department's Notice of Determination was published in the **Federal Register** on December 11, 2009 (74 FR 65800).

By application dated October 28, 2009, the petitioning workers requested administrative reconsideration of the Department's negative determination. In the request, the petitioners alleged that production had shifted out of the subject facility to facilities located outside of the United States that were operated by the subject firm. The petitioners also alleged that the subject firm imports articles like or directly competitive with those produced at the subject facility.

To investigate the petitioners' claims, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration, on November 16, 2009. The Department's Notice of Determination was published in the **Federal Register** on December 8, 2009 (74 FR 64712).

During the reconsideration investigation, the Department obtained new and additional information from the subject firm regarding the petitioners' claims. Based on the findings of the reconsideration investigation, the Department concluded that worker separations at the subject facility were not caused by either a shift in production abroad or increased imports of articles like or directly competitive with those produced by the subject worker group. As such, the Department issued a Notice of Negative Determination on Reconsideration on January 22, 2010. The Department's Notice of determination was published in the **Federal Register**, on February 1, 2010 (75 FR 5151).

In the complaint filed with the USCIT, dated March 1, 2010, the Plaintiffs allege that workers at the subject facility were impacted by import competition and by a shift in production to overseas facilities by the subject firm.

In the complaint filed with the USCIT on March 29, 2010, the UE 506 alleged that workers at the subject facility were impacted by import competition, shifts abroad of multiple production lines by the subject firm, and foreign acquisitions by the subject firm of articles like or directly competitive with

those produced by the subject worker group.

The intent of the Department is for a certification to cover all workers of a subject firm or appropriate subdivision who were adversely affected by increased imports of an article produced by the firm or a shift in production of the article, based on the investigation of the TAA petition. Therefore, the Department requested voluntary remand to address the allegations made by the two sets of plaintiffs, to determine whether the subject worker group is eligible to apply for TAA under the Trade Act of 1974, as amended (hereafter referred to as the Act), and to issue an appropriate remand determination.

To apply for worker adjustment assistance under Section 222(a) of the Act, 19 U.S.C. 2272(a), the following criteria must be met:

I. The first criterion (set forth in section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) requires that a significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.

II. The second criterion (set forth in section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied if either:

(i)(I) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; or

(i)(II) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.

III. The third criterion requires that the shift/acquisition must have contributed importantly to the workers' separation or threat of separation. *See* section 222(a)(2)(B)(ii) of the Act, 19 U.S.C. 2272(a)(2)(B)(ii).

As amended by the Trade and Globalization Adjustment Assistance Act of 2009, section 222 of the Act (19 U.S.C. 2272) covers foreign contracting scenarios, where a company closes a domestic operation and contracts with a company in a foreign country for the goods or services that had been produced in the United States.

During the remand investigation, the Department obtained information from the subject firm, solicited input from the two sets of Plaintiffs, and addressed all of the Plaintiffs' allegations.

Based on the information collected during the remand investigation, the Department determined that the subject worker group was impacted by a shift in production of articles like or directly competitive with the locomotives, locomotive kits, and propulsion and specialty parts produced at the subject facility.

The Department's findings on remand revealed that the subject firm engages in practices that entail the transfer of work to foreign countries under "localization" agreements in which the subject firm penetrates into foreign markets under joint ventures with entities in the foreign country. Further, although the subject firm asserts that the articles manufactured at the facilities abroad are not identical in nature to the articles manufactured at the subject facility, upon close examination of data collected on remand, the Department has determined that the articles manufactured abroad are like or directly competitive with those produced by the subject worker group. The regulations implementing the Act, at 29 CFR 90.2, provide that "like or directly competitive articles" include those which are substantially identical in inherent or intrinsic characteristics, as well as those which are substantially equivalent for commercial purposes.

After a painstaking review on remand, the Department has determined that a significant number or proportion of the workers in the appropriate subdivision of the subject firm was separated. Further, the Department has determined that a shift in production abroad of articles like or directly competitive with the articles produced by the subject worker group contributed importantly to worker group separations. Therefore, the Department has determined that the group eligibility requirements under section 222(a)(2)(B) of the Trade Act of 1974, as amended, have been met.

Conclusion

After careful review of the facts during the remand investigation, I determine that the workers' firm has shifted to foreign countries the production of articles like or directly competitive with those produced by the subject firm or appropriate subdivision, and such shift of production contributed importantly to worker group separations at the subject facility. In accordance with section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of General Electric Company, Transportation Division, including on-site leased workers from Adecco Technical, Erie, Pennsylvania, who became totally or partially separated from employment on or after June 10, 2008, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 23rd day of July 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–19390 Filed 8–5–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings

TIME AND DATES:

All meetings are held at 2:30 p.m.
Tuesday, August 3;
Thursday, August 12;
Wednesday, August 18;
Wednesday, August 25;
Thursday, August 26;
Friday, August 27, 2010.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." *See* also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Dated: August 4, 2010.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2010–19538 Filed 8–4–10; 11:15 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing

opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by October 5, 2010, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Implementation Evaluation of the ADVANCE Program.

OMB Control No.: 3145–0209.

Expiration Date of Approval: October 31, 2012.

Abstract: The ADVANCE Program was established by the National Science Foundation in 2001 to address the underrepresentation and inadequate advancement of women on STEM (Science, Technology, Engineering, and Mathematics) faculties at postsecondary institutions. The evaluation being conducted by the Urban Institute focuses on the implementation of ADVANCE projects at institutions throughout the nation. The three major funding components—institutional transformation, leadership, and partnership awards—as well as all cohorts funded that completed their funding cycles will be included. The study will rely on a thorough review of project documents, telephone interviews with all grantees, and detailed case studies at selected sites. The goal of the evaluation will be to identify models of implementation and, depending on outcomes by model, conduct case studies at selected institutions to understand how ADVANCE models operate and may be effective in differing settings.

Respondents: Faculty and staff at institutions of higher education awarded an ADVANCE grant from NSF.

Estimated Number of Annual Respondents: 151 (total).

1. *Site visit interviews.* Conduct interviews in 6 sites selected for case studies. Interview project staff, administrators and faculty. Burden calculated as follows: Approximately 8 interviews in each site + interview recipients of leadership awards at case study sites (if any).

Total respondents: 48 estimated interviewees + 7 leadership and PAID award recipients = 55

2. Site visit focus groups with faculty: 2 per site; 6 sites; 6–8 faculty in each; total = 96

Burden on the Public: 149 hours (maximum). Calculated as follows:

1. Site visit interviews: 48 interviews of 1 hour duration = 48 hours and 7 interviews of 45 minutes duration = 5.25 hours (53)

2. Focus groups: 96 participants of 1 hour duration = 96 hours

Dated: August 3, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–19458 Filed 8–5–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0522; Docket No. 50–284; License No. R–110]

Idaho State University; Notice of Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated June 26, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092440721), filed by Dr. Kevan Crawford, hereinafter referred to as the "petitioner." Additionally, the petitioner requested further enforcement action against the licensee, during a transcribed conference call which addressed the Petition Review Board (PRB) on September 1, 2009 (ADAMS Accession No. ML09244072), supplementing the June 26, 2009, petition.

Action Requested

The petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) take the following enforcement actions:

(1) The reactor operating license should be suspended immediately. All continuing violations, including items that Dr. Crawford alleged were unresolved from the Notice of Violation (NOV) 93–1 as well as 20 violations that Dr. Crawford alleged to be concealed must be reconciled with the regulatory requirements immediately. The alleged violations correspond to regulatory, criminal, and ethical misconduct which Dr. Crawford contends had impacted public health and safety and the environment of Pocatello, Idaho.

(2) The licensee should be fined for all damages related to the violations and cover-up of violations.

(3) The licensee should be required to carry a 50-year $50,000,000 bond to cover latent radiation injuries instead of covering these injuries with unreliable State budget allocations for contingency funds.

(4) During the fall semester of 1993, Dr. Crawford alleges that students utilizing the reactor lab facilities were handling irradiated samples without permission. Furthermore he alleges that the samples were handled without anti-contamination clothing and no radiological surveys were conducted, although he states neither of which was required. Dr. Crawford contends said students proceeded to the local hospital to visit friends in the neonatal unit. Upon this basis, Dr. Crawford requests every potential exposure and contamination victim be identified through facility records, located, and informed of the potential risk to them and their families. The Medical Center in Pocatello, Idaho, should also be informed so that they may do the same. Those who were exposed should be informed of the entire range of expected symptoms and of their right to seek compensation from the licensee.

(5) The following should warrant immediate revocation of the operating license due to the inability of the licensee to account for, with documentation, controlled byproduct nuclear materials that were:

a. Released in clandestine, undocumented shipments before August 4, 1993;

b. Possessed by individuals not licensed to control the materials, and

were not certified to handle the materials;

c. Without proper Title 49 Code of Federal Regulations (49 CFR) Department of Transportation (DOT) certified containers;

d. Without proper labeling for transport on public roads; and

e. Concealed via fraudulent Annual Operating Reports in which the licensee failed to address uncontrolled by-product material distribution and facility modifications and which were never amended after NOV 93–1.

(6) The licensee must permanently revoke the Broad Form License.

(7) The licensee must publicly acknowledge that there was a loss of control of Special Nuclear Material (SNM).

(8) The licensee must publicly acknowledge persons that served as an accessory to concealing unlawful distribution of controlled substances, fraud (both Annual Operating Reports and National Whistleblower Center), loss of control of SNM, and child endangerment.

Petitioner's Bases for the Requested Action

The petitioner, Dr. Crawford, stated that during his tenure as the Reactor Supervisor at the Idaho State University research reactor from December 19, 1991 until March 12, 1993, he witnessed regulatory, criminal, and ethical violations associated with the operation of the NRC licensed facility. Furthermore, Dr. Crawford contends that the NRC was grossly negligent in concealing violations in the Notice of Violation (NOV) (Inspection Report 50–284/93–01) (ADAMS Accession No. ML092600304) and that Idaho State University continues to operate its reactor in violation of regulatory requirements. The petitioner provided a detailed historical chronology of events with regards to observed activity and alleged acts of misconduct involving staff who worked during the said period of Dr. Crawford's tenure.

Determination for NRC Review Under 10 CFR 2.206

On September 15, 2009, the NRC Petition Review Board (PRB) convened to discuss the petition under consideration and determine whether it met the criteria for further review under the 10 CFR 2.206 process. The PRB comprised NRC technical and enforcement staff and legal counsel, and it was chaired by an NRC senior-level manager. The PRB determined that the petition under consideration met the criteria established in NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," and was accepted in part into the 10 CFR 2.206 process.

Issues that were not accepted into the 2.206 petition process did not satisfy the criteria as specified in NRC Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions." In such instances: (1) The incoming correspondence does not ask for an enforcement-related action or fails to provide sufficient facts to support the petition, but simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns and/or, (2) The petitioner raises issues that have already been the subject of NRC staff review and evaluation, either on that facility, other similar facilities, or on a generic basis, for which a resolution has been achieved, the issues have been resolved, and the resolution is applicable to the facility in question. Additionally, portions of the petition raised several concerns not within the jurisdiction of NRC.

The PRB's final recommendation was to accept for review, pursuant to 10 CFR 2.206, the following concerns from the petition:

(1) Failure to conduct 10 CFR 50.59 safety review of the modification of the Controlled Access Area by the addition of an undocumented roof access for siphon breaker experiment implemented prior to 1991. The June 26, 2009, petition states that the modification allowed random student access to the roof of the reactor room.

(2) Release of controlled by-product nuclear materials in containers not certified in accordance with 10 CFR Part 71 for transport of such materials on public roads and not labeled with the required labeling.

(3) Failure to require the reactor operator conducting the startup procedures to wear protective clothing during routine removal of the activated startup channel detector from the reactor core. In the petition Dr. Crawford states that this was cited as an Apparent Violation, but the NRC should not have dropped this item in the final NOV.

(4) Routine unprotected handling of an unshielded neutron source (reactor start-up source) by licensed operators and uncontrolled access by untrained and unlicensed facility visitors to this neutron source, violating the 10 CFR Part 20 as low as is reasonably achievable (ALARA) requirements.

On September 28, 2009, the petitioner was contacted via telephone and was provided the initial recommendations of the PRB. Pursuant to NRC MD 8.11, Dr. Crawford was afforded the opportunity to comment on the recommendations and to provide any relevant additional explanation and support for the request in light of the PRB's recommendations. Through subsequent e-mail communication, Dr. Crawford declined the opportunity to respond to the PRB's recommendations or to provide further information for support of the petition request (ADAMS Accession Nos. ML092720460 and ML092720824).

The PRB's final recommendation for the petition was documented in the acknowledgment letter dated November 19, 2009 (ADAMS Accession No. ML092800432).

During the week of February 23–24, 2010, a non-routine inspection (Idaho State University-NRC Non-Routine Inspection Report No. 50–284/2010–201, ADAMS Accession No. ML100321367) was conducted at the Idaho State University research reactor to review logs, records, and observe the performance of licensed activities, pertinent to the issues accepted for Dr. Crawford's 2.206 Petition. Copies of Inspection Report No. 50–284/2010–201 were provided to reactor facility staff at the Idaho State University and to the petitioner.

On March 19, 2010, the NRC sent a copy of the Proposed Director's Decision (ADAMS Accession No. ML104917500) to Dr. Crawford and to staff at Idaho State University for comment. Neither the petitioner nor the licensee responded with comment.

The Director of the Office of Nuclear Reactor Regulation has determined that the request for enforcement action against the Idaho State University AGN–201M research reactor to be denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD No. 10–03), the complete text of which is available in ADAMS (Accession No. ML100491750) for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the NRC's Web site (*http://www.nrc.gov*) on the World Wide Web, under the "Public Involvement" icon.

Summary of Staff Findings

The following lists the four issues from Dr. Crawford's petition which the PRB accepted for review, pursuant to 10 CFR 2.206, and the associated conclusion made during the inspection:

(1) Failure to conduct 10 CFR 50.59 safety review of the modification of the Controlled Access Area by the addition of an undocumented roof access for siphon breaker experiment implemented prior to 1991.

Observations

The inspectors reviewed numerous records available onsite, dating from 1975 through the present, and interviewed present and former licensee facility employees. From these records and interviews the inspectors ascertained that the Siphon Breaker Experiment (SBE) was an experiment that did not involve, and was not connected to, the licensee's research and test reactor. Because of the height of the piping involved in the SBE, the experiment was conducted inside the Reactor Room. Some of the piping extended out of the roof of the Reactor Room (through a temporary penetration in the equipment hatch cover plate) while the bottom portion of the SBE rested in the Gamma Irradiation pit. This provided sufficient vertical space for the experiment to be conducted but also required people working on the experiment to access the Reactor Room.

No 10 CFR 50.59 review of the SBE was found among the records reviewed by the inspectors. However, upon reviewing the SBE as it was described, evidence does not support that a 10 CFR 50.59 review was required, as the facility Safety Analysis Report (SAR) for the Idaho State AGN–201M Reactor did not describe the equipment access hatch in detail, aside from dimensions and material composition. A 10 CFR 50.59 review by the licensee would have been necessary if the modification would have changed structures, systems, and components as described in the SAR.

During the August 1989 timeframe, there were concerns about the security of the Reactor Room (Room 20) because of various people needing access to the area. These concerns were brought to the attention of the Reactor Supervisor. After a review of the practices and security arrangements for operation of the SBE, a temporary procedure was implemented to restrict access to the Reactor Room and to ensure that the experimenters' activities were in compliance with the Physical Security Plan.

The inspectors also reviewed numerous records available onsite, dating from 1975 through the present, and interviewed present and former licensee facility employees concerning the installation of the personnel roof access ladder and hatch. This was an issue Dr. Crawford identified during the transcribed conference call with the PRB on September 1, 2009 (ADAMS Accession No. ML092650381). It was noted by the inspectors that the ladder and roof hatch were installed to provide a secondary means of escape from the Reactor Room in case of emergency.

Through records review, it was noted that during the meeting of the Reactor Safety Committee (RSC) in 1989, the installation of the emergency escape ladder in either the Reactor Room or Reactor Laboratory (Lab) was discussed, as was the installation of a fire alarm and smoke detector. The personnel roof access hatch was also addressed in Rev. 3 and Rev. 4 of the Physical Security Plan for the facility dated February 23, 1990, and January 27, 2003, respectively. No 10 CFR 50.59 review of the roof access hatch was found among the records reviewed by the inspectors. Regarding the SBE, evidence does not support that a 10 CFR 50.59 review was required since it was not a modification to existing structures and/or equipment, as described in the SAR.

The review of recent licensee 10 CFR 50.59 reviews demonstrated that the licensee is aware of the 10 CFR 50.59 process and that various operating and safety aspects of modifications to existing structures and/or equipment needed to be reviewed (and, if needed, approved by the RSC, or the NRC if applicable) prior to implementing the changes.

Conclusion

Although no 10 CFR 50.59 reviews were found covering the Siphon Breaker Experiment or the personnel roof access ladder and hatch, evidence does not support that such a review was needed since they were not modifications to the existing structures and/or equipment, as described in the SAR. In addition, the inspectors became aware through record review that the licensee acknowledged and addressed the security aspects of the SBE. Furthermore, the licensee developed a procedure to restrict access to the Reactor Room to be in compliance with the Physical Security Plan during the timeframe which the SBE was in use.

(2) Release of controlled by-product nuclear materials in containers not certified in accordance with 10 CFR Part 71 for transport of such materials on public roads and not labeled with the required labeling.

Observations

The inspectors reviewed various records dating from 1975 through the present and interviewed present and former licensee facility employees. From these records and interviews the inspectors determined that radioactive materials produced in the reactor were (and are) typically used in the Reactor Room or the adjacent Lab and then left in/returned to the Reactor Room for decay. On occasion radioactive material is transferred to other individuals or groups for use elsewhere. In the past, the NRC noted problems in this area as documented in Inspection Report No. 50–284/93–01, dated November 4, 1993. As a result, the licensee took various actions to correct the problems and deficiencies. One action was to revise and improve the record keeping system for tracking byproduct material. The record system and the forms used in tracking material were reviewed by the inspectors. The material had either been transferred to an authorized/licensed individual or company as required or it was held in the Reactor Room until it had decayed to background or near background activity levels. No violations were noted.

Another action the licensee took as a result of the problems in 1993 was to revise the procedures for shipping radioactive materials from the ISU campus. In reviewing the current shipping procedures used at ISU, it was noted that radioactive material to be shipped from the reactor facility is required to be transferred to the campus Technical Safety Office (TSO). A person from that office, designated as the ISU Certified Shipper, is responsible for ensuring that the material is shipped in accordance with the rules specified by the DOT in 49 CFR Parts 171 through 180. If assistance is needed, a certified shipper from the Idaho National Laboratory is called in for advice and consultation to ensure that all aspects of the regulations are met including (but not limited to): (1) Completion of the appropriate shipping papers, (2) use and marking of properly certified containers, (3) attachment of the proper labeling, and (4) use of appropriate placards for the transport vehicle as needed.

The inspectors also conferred with NRC inspectors from the Region IV office concerning their review of the radioactive material shipping program at ISU. In 1993, inspectors from Region IV indicated that they had reviewed the ISU program for receiving, handling, and shipping byproduct and source material. Recent reviews noted no violations during the last three inspections.

A review of the available records indicated that no shipments of radioactive material from the reactor had been made in the past several years.

Conclusion

The NRC review did not find any inappropriate release of material in uncertified containers and not properly labeled. Regarding present operations, radioactive material to be shipped from the reactor facility is required to be transferred to the TSO and that office is responsible for completing the transfer

or shipment. Shipments of radioactive material are verified to be in compliance with the regulations and, if needed, with the help of a consultant. No shipments of radioactive material from or produced in the reactor have been made in the past several years.

(3) Failure to require the reactor operator conducting the startup procedures to wear protective clothing to routinely remove the activated startup channel detector from the reactor core. The June 26, 2009, letter states that this was cited and mishandled in the 93–1 Notice of Violation (NRC Inspection Report 50–284/93–01).

Observations

NRC Inspection Report (50–284/93–01) (ADAMS Accession No. ML100490079) addressed the Apparent Violation (50–284/9301–07), where the inspectors noted that a radiation detector was used in association with Experimental Procedure 21 (EP–21), "Auto Reactivity Control System Operation" and was placed in the thermal column of the reactor, but not surveyed when removed. The survey would have determined if activation products presented a radiological hazard to persons handling the detector. At the time, 10 CFR 20.201 (b), "Surveys" was cited as the basis for an apparent violation for the licensee's failure to make reasonable surveys under the circumstances to evaluate the extent of radiation hazards that may be present.

The 93–1 NOV contains Enclosure No. 4, "Idaho State University Presentation" which was conducted by the ISU reactor facility staff during the NRC–ISU Enforcement Conference held on October 8, 1993, which discussed the licensee's process for EP–21. The supplemental information showed that upon EP–21's completion the ion chamber was left in the thermal column until another experiment requires the thermal column to be altered, which at that time the surveys would be taken to determine radiation levels which would be recorded in the operations log. Based on the supplemental information provided during the Enforcement Conference, no citation was issued for the apparent violation as surveys of the ion chamber were conducted at the time of thermal column alteration.

The inspectors interviewed facility staff and determined that EP–21 has not been employed since 1995, and equipment is presently not in service at the facility. The inspectors followed-up on the current protocol with regards to handling of the startup channel detector (Channel No. 1). By verification of the procedure and through interviews with facility staff, it was determined that when reactor power reached the target threshold (as stated in Operational Procedure (OP)-1), an operator would depress an automated raise switch which would move the detector from an area of high flux, to an area of lower flux within the water tank. The Channel No. 1 detector is not removed from the water tank where it would be reasonable to conduct radiological surveys. The Channel No. 1 detector is lowered back into its fixed position by extending a solenoid arm external to the water tank, without direct contact of potentially contaminated equipment.

The inspectors reviewed contamination and radiation survey records as required by TS Section 4.4c, Radiation Safety manual (RSM) Sections 6.3 and 7.2, and Radiation Safety Procedures (*e.g.,* Experimental Procedure-8). The inspectors reviewed logs of reactor operating and shutdown conditions, interviewed TSO staff, and performed an independent radiation survey and determined that readings were consistent and comparable to those with the licensee.

Conclusion

Supporting information from the 1993 NRC–ISU Enforcement Conference provided is consistent with the 10 CFR Part 20 requirements for conducting reasonable surveys under the circumstances to evaluate the extent of radiation hazards that may be present. Currently, the licensee does not employ EP–21 and the equipment is not in service at the facility. The present handling of the startup channel detector is performed in accordance with procedure which does not require the use of protective clothing. A review of contamination and radiation survey logs was performed without issue.

(4) Routine unprotected handling of an unshielded neutron source (reactor start-up source) by licensed operators and uncontrolled access by untrained and unlicensed facility visitors to this neutron source, violating 10 CFR Part 20 ALARA requirements.

Observations

During the inspection period the reactor was inoperable due to maintenance of control systems. The inspectors reviewed contamination and radiation survey records as required by TS Section 4.4c, Radiation Safety Manual Sections 6.3 and 7.2, and Radiation Safety Procedures (e.g., EP–8). Additionally, the inspectors reviewed logs of reactor operating and shutdown conditions, interviewed TSO staff, and performed an independent radiation survey and determined that readings were consistent and comparable to those with the licensee. During the last Reactor Full Power Survey, conducted on July 21, 2009, by ISU TSO staff, the inspectors determined, through record review, that the radiation level at the reactor console during 4 W reactor power was 0.4 mr/hr. Streaming radiation from the one inch diameter access hole or "glory hole" is shielded by 12-inch thick, high density baryte concrete blocks which reduce the radiation levels. The level of radiation on the unshielded side of the glory hole, streaming away from reactor console, was 70 mr/hr at a distance of 1 m.

The inspectors reviewed records for leak checks of the 10 mCi Ra-Be source which is used during reactor startup. The records indicated that recorded levels during analyses were below the threshold for minimum detectable activity of the liquid scintillation counter.

The inspectors interviewed facility staff and reviewed the reactor startup procedure, OP–1. The procedure provides guidance for the operator to insert the Ra-Be startup source into the glory hole, Thermal Column, or a beam port as needed for startup, however the procedure does not explicitly provide a step for startup source removal and storage. Reactor Operators are trained to remove the startup source at the point where the nominal rod height has been established and power has stabilized. The startup source is removed by hand and is stored in a lead shielded storage receptacle, known as a "pig" for subsequent use.

The procedure does not explicitly state a requirement for protective clothing as the startup source does not directly come in contact with the operator during handling; it is currently threaded onto the end of a 6 foot aluminum rod which facilitates placement into the reactor.

Conclusion

The NRC review did not find unprotected handling of an unshielded neutron source and uncontrolled access to the source. No violations of 10 CFR Part 20 were identified. Radiation surveys performed by TSO staff during reactor operations indicate consistent dose rates on the order of 0.4 mr/hr at the reactor console. Contamination surveys, involving the leak check for the Ra-Be startup source indicate levels below the threshold for minimum detectable activity of the liquid scintillation counter. Handling of the Ra-Be startup source is conducted in accordance with the approved procedure.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland this 30th day of July 2010.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–19407 Filed 8–5–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

International Product Change—Global Expedited Package Services—Non-Published Rates

AGENCY: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services Contracts—Non-Published Rates to the Competitive Products List pursuant to 39 U.S.C. 3642.

DATES: August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that it has filed with the Postal Regulatory Commission a Request of the United States Postal Service to add Global Expedited Package Contracts—Non-Published Rates to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Enabling Governors' Decision. Documents are available at *http://www.prc.gov,* Docket Nos. MC2010–29 and CP2010–72.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–19488 Filed 8–5–10; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on September 23, 2010, at 9:30 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 25th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 25th Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092

Dated: August 2, 2010.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 2010–19394 Filed 8–5–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12244 and #12245]

Kentucky Disaster Number KY–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA–1925–DR), dated 07/23/2010.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: 07/17/2010 through 07/30/2010.

Effective Date: 07/30/2010.

Physical Loan Application Deadline Date: 09/21/2010.

Economic Injury (EIDL) *Loan Application Deadline Date:* 04/25/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kentucky, dated 07/23/2010, is hereby amended to establish the incident period for this disaster as beginning 07/17/2010 and continuing through 07/30/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–19416 Filed 8–5–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12260 and #1226]

Oklahoma Disaster #OK–00042

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of OKLAHOMA dated 08/03/2010.

Incident: Tornadoes, Severe Storms and Flooding.

Incident Period: 07/06/2010 through 07/12/2010.

Effective Date: 08/03/2010.

Physical Loan Application Deadline Date: 10/04/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Oklahoma.

Contiguous Counties:

Oklahoma: Canadian, Cleveland, Kingfisher, Lincoln, Logan, Pottawatomie.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12260 B and for economic injury is 12261 0.

The States which received an EIDL Declaration # are Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 3, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–19418 Filed 8–5–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Annual Meeting of the Regional Small Business Regulatory Fairness Boards Office of the National Ombudsman

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open meeting of the Regional Small Business Regulatory Fairness Boards.

SUMMARY: The SBA, Office of the National Ombudsman is issuing this notice to announce the location, date, time and agenda for the annual board meeting of the ten Regional Small Business Regulatory Fairness Boards (Regional Regulatory Fairness Boards). The meeting is open to the public.

DATES: The meeting will be held on the following dates: Monday, August 30, 2010 from 8:30 a.m. to 5 p.m. EST and on Tuesday, August 31, 2010 from 9 a.m. to 1 p.m. EST.

ADDRESSES: The meeting will be at the SBA Headquarters, 409 3rd Street, SW., Washington, DC 20416, in the Eisenhower Conference Room located on the 2nd Floor.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Sec. 222, SBA announces the meeting of the Regional Regulatory Fairness Boards. The Regional Regulatory Fairness Boards are tasked to advise the National Ombudsman on matters of concern to small businesses relating to enforcement activities of agencies and to report on substantiated instances of excessive enforcement against small business concerns, including any findings or recommendations of the Board as to agency enforcement practice or policy.

The purpose of the meeting is to discuss the following topics related to the Regional Regulatory Fairness Boards:

—RegFair Board Member Duties, Responsibilities, and Standards of Conducting Briefing
—Regulatory Process for Federal Agencies
—Planning and Logistics of Hearings/ Roundtables
—Media Relations and ONO Highlights
—Securing Comments and the Comment Process
—ONO Annual Report to Congress
—Federal Agency Partnerships Panel
—Small Business and Trade Policy Briefing
—The ONO from the Beginning to Present (1996–2010)
—Board Member Travel Reimbursement

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Regulatory Fairness Boards must contact Yolanda Swift by August 23, 2010 by fax or e-mail in order to be placed on the agenda. *Yolanda.swift@sba.gov,* Deputy National Ombudsman for Regulatory Enforcement Fairness, Office of the National Ombudsman, 409 3rd Street, SW., Suite 7125, Washington, DC 20416, phone (202) 205–6918, fax (202) 401–6128.

Additionally, if you need accommodations because of a disability or require additional information, please contact José Méndez, Case Management Specialist, Office of the National Ombudsman, 409 3rd Street, SW., Suite 7125, Washington, DC 20416, phone (202) 205–6178, fax (202) 401–2707, e-mail *jose.mendez@sba.gov.*

For more information on the Office of the National Ombudsman, please visit our Web site at *http://www.sba.gov/ombudsman.*

Dated: August 2, 2010.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2010–19347 Filed 8–5–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (*see also* Pub. L. 111–117, Section 621) will hold an Open Meeting on Wednesday, August 11, 2010, in the first floor hearing room of the CFTC's Washington, DC headquarters, which is located at Three Lafayette Centre, 1155 21st St., NW.

The meeting will begin at 9 a.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will be open at 8 a.m. Visitors will be subject to security checks. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will include: (i) Committee organizational matters; and (ii) hearing two industry panels presenting views and information regarding the market events of May 6, 2010.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: August 3, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19526 Filed 8–4–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62605; File No. SR–NASDAQ–2010–068]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change to Establish a Revenue Sharing Program With Correlix, Inc.

July 30, 2010.

On June 8, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a revenue sharing program with Correlix, Inc. ("Correlix"). The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

June 25, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, NASDAQ described real-time analytical tools offered by Correlix to measure the latency of orders to and from the NASDAQ Market Center, and also described the terms of the pricing and the revenue sharing agreement between Correlix and the Exchange. In addition, NASDAQ represented that under the agreement, NASDAQ will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the NASDAQ Market Center. According to the Exchange, NASDAQ will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the NASDAQ market varies depending on the number of unique MPIDs and ports selected by the customer for monitoring by Correlix. For NASDAQ (including the NASDAQ Options Market), the fee will be an initial $3,000 monthly base fee for the first unique MPID monitored. For each additional unique MPID sought to be monitored, an additional monthly charge of $1,000 will be assessed. The monthly price for each unique MPID includes the monitoring of up to 25 NASDAQ port connections associated with that particular MPID. Customers that wish to exceed 25 ports per MPID for monitoring can purchase additional 25 port blocks for an additional fee of $1,000 per month per MPID.

According to the Exchange, Correlix will see an individualized unique NASDAQ-generated identifier that will allow Correlix RaceTeam to determine round-trip order time,[4] from the time the order reaches the NASDAQ extranet, through the NASDAQ matching engine, and back out of the NASDAQ extranet. In its proposal, the Exchange represented that the RaceTeam product offering does not measure latency outside of the NASDAQ extranet. Further, NASDAQ stated that the unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Accordingly, Correlix will not see subscriber's individual order detail such as security, price or size; individual RaceTeam subscribers' logins will restrict access to only their own latency data; and Correlix will not see specific information regarding the trading activity of non-subscribers.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[7] which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Pursuant to the arrangement, NASDAQ makes the RaceTeam product uniformly available to all customers who voluntarily request it and pay the fees as detailed in the proposal, pursuant to a standard non-discriminatory pricing schedule. In addition, the Commission believes that the proposal will further the protection of investors and the public interest because: (1) Correlix will only be able to view data related to latency for Correlix RaceTeam subscriber firms; (2) Correlix will not see a subscriber's individual order detail such as security, price or size; (3) individual RaceTeam subscribers' logins will restrict access to only their own latency data; and (4) Correlix will not see specific information regarding the trading activity of non-subscribers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASDAQ–2010–068) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19330 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 62326 (June 18, 2010), 75 FR 36460 ("Notice").

[4] According to NASDAQ, the product measures latency of orders regardless of whether the orders are rejected, executed, or partially executed.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62623; File No. SR–NYSEArca–2010–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Listing and Trading of WisdomTree Dreyfus Commodity Currency Fund under NYSE Arca Equities Rule 8.600

August 2, 2010.

I. Introduction

On June 10, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares ("Shares") of the WisdomTree Dreyfus Commodity Currency Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on June 29, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600 which governs the listing and trading of "Managed Fund Shares" on the Exchange.[4]

The Fund will be an actively managed exchange traded fund. The Shares will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62349 (June 22, 2010), 75 FR 37510 ("Notice").

[4] Managed Fund Shares are defined as securities that (a) represent an interest in a registered investment company organized as an open-end management investment company or similar entity that invests in a portfolio of securities selected by the investment company's investment adviser consistent with the investment company's investment objectives and policies; (b) are issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. *See* NYSE Arca Equities Rule 8.600(c)(1).

be offered by the WisdomTree Trust ("Trust"), which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company.[5] WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund.[6] The Exchange represents that WisdomTree Asset Management is not affiliated with any broker-dealer. The Dreyfus Corporation ("Dreyfus"), which will serve as the sub-adviser for the Fund ("Sub-Adviser"), is affiliated with multiple broker-dealers and, accordingly, has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.[7] The Bank of New York is the administrator, custodian and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.[8]

WisdomTree Commodity Currency Fund

The Fund seeks to achieve total returns reflective of money market rates in selected commodity-producing countries and changes to the value of such countries' currencies relative to the U.S. dollar.

The Fund is designed to provide exposure to both the currencies and money market rates available to foreign investors in selected commodity-producing countries. The Fund intends to invest in commodity-producing countries such as Australia, Brazil, Canada, Chile, Indonesia, Mexico, New Zealand, Norway, Russia and South Africa. In addition to seeking broad exposure across countries and currencies, the Fund intends to seek exposure across currencies correlated to each of the key commodity groups: Industrial metals, precious metals, energy, agriculture and livestock. The Fund generally will invest only in currencies that "float" relative to other currencies. The value of a floating currency is largely determined by supply and demand and prevailing market rates. In contrast, the value of a "fixed" currency generally is set by a government or central bank at an official exchange rate. The Fund generally does not intend to invest in the currencies of notable commodity producers, such as China, Saudi Arabia and the United Arab Emirates, since they are fixed or otherwise closely linked to the U.S. dollar. The Fund will only invest in currencies that it deems to be sufficiently liquid and accessible.[9]

The Fund intends to achieve exposure to selected commodity-producing countries available to U.S. investors by investing primarily in short-term U.S. money market securities and forward currency contracts and swaps. The combination of money market securities with forward currency contracts and currency swaps is designed to create a position economically similar to a money market instrument denominated in a non-U.S. currency. A forward currency contract is an agreement to buy or sell a specific currency at a future date at a price set at the time of the contract. A currency swap is an agreement between two parties to exchange one currency for another at a future rate.

In order to reduce interest rate risk, the Fund generally expects to maintain an average portfolio maturity of 90 days or less. The "average portfolio maturity" of the Fund is the average of all the current maturities of the individual securities in the Fund's portfolio. All money market securities acquired by the Fund will be rated in the upper two short-term ratings by at least two nationally recognized statistical rating organizations ("NRSROs") or, if unrated, deemed by the Adviser to be of equivalent quality.

As a matter of general policy, the Fund will invest, under normal circumstances, at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in investments that are tied economically to selected commodity-producing countries available to U.S. investors that make a significant contribution to the global export of commodities. If, subsequent to an investment, the 80% requirement is no longer met, the Fund's future investments will be made in a manner that will bring the Fund into compliance with this policy.

The Fund may invest up to an aggregate amount of 10% of its net assets in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.

Additional information regarding the Trust, the Fund, the Shares, the investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[10]

[5] *See* Post-Effective Amendment No. 32 to Registration Statement on Form N–1A for the Trust, dated March 19, 2010 (File Nos. 333–132380 and 811–21864), as supplemented on June 8, 2010 (the "Registration Statement"). The descriptions of the Fund and the Shares contained herein are based on information in the Registration Statement.

[6] WisdomTree Investments, Inc. ("WisdomTree Investments") is the parent company of WisdomTree Asset Management.

[7] The Exchange represents that the Adviser and Sub-Adviser, and their related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). *See* Investment Company Act Release No. 28174 (February 27, 2008) (File No. 812–13470). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the Federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[9] The Fund may pursue its objectives through direct investments in money market instruments issued by entities in the applicable foreign country and denominated in the applicable non-U.S. currency when WisdomTree Asset Management believes it is in the best interest of the Fund to do so. The decision to secure exposure directly or indirectly will be a function of, among other things, market accessibility, credit exposure, and tax ramifications for foreign investors. If the Fund pursues direct investment, eligible investments include short-term securities issued by the applicable foreign government and its agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, and short-term, high-quality corporate debt obligations designed to provide exposure to the applicable non-U.S. currency and money market rates, and U.S. dollar money market instruments.

[10] *See* supra notes 3 and 5.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [11] and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association's high-speed line, and the Portfolio Indicative Value ("PIV") will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Trust will make available on its Web site on each business day before the commencement of trading in Shares in the Core Trading Session the Disclosed Portfolio that will form the basis for the calculation of the NAV, which will be determined at the end of the business day.[15] The Fund's Web site will also include additional quantitative information updated on a daily basis relating to NAV. Information regarding the market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

The Commission further believes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange represents that it will obtain a representation from the issuer of the Shares that the net asset value per share for the Fund will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.[16] Additionally, if the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading until such time as the NAV or the Disclosed Portfolio is available to all market participants.[17] Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[18] The Exchange represented that the Sub-Adviser is affiliated with multiple broker-dealers and, accordingly, has implemented a "fire wall" with respect to those broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. Further, the Commission notes that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[19]

The Exchange represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d).

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Before commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A–3 under the Act.[20]

(5) The Fund will not invest in non-U.S. equity securities.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2010–51) be, and it hereby is, approved.

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[11] 15 U.S.C. 78f.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] The Commission notes that the Reporting Authority providing the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[16] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[17] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[18] *Id.* Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[19] *See* Commentary .06 to NYSE Arca Equities Rule 8.600.

[20] 17 CFR 240.10A–3.

[21] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19434 Filed 8–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62620; File No. SR–NYSEArca–2010–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the ETFS White Metals Basket Trust

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 22, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade ETFS White Metals Basket Shares of the ETFS White Metals Basket Trust pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFS White Metals Basket Shares ("Shares") of the ETFS White Metals Basket Trust ("Trust") under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."[3] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of Commodity-Based Trust Shares. The Commission has approved listing on the Exchange of ETFS Silver Trust[4], ETFS Gold Trust[5], ETFS Platinum Trust[6] and ETFS Palladium Trust (collectively, the "ETFS Trusts").[7] In addition, The Commission has approved listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.[8] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange ("NYSE") and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC (now known as "NYSE Amex LLC").[9] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[10] The Commission also has approved listing of the iShares Silver Trust on the Exchange[11] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC.[12]

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of physical silver, platinum and palladium in the proportions held by the Trust, less the expenses of the Trust's operations.[13]

ETFS Services USA LLC is the sponsor of the Trust ("Sponsor"), The Bank of New York Mellon is the trustee of the Trust ("Trustee"),[14] and JPMorgan Chase Bank, N.A. is the custodian of the Trust ("Custodian").[15]

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[4] Securities Exchange Act Release No. 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28).

[5] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[6] Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

[7] Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

[8] *See* Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (order approving listing on the Exchange of the streetTRACKS Gold Trust); 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[9] *See* Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[10] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (order approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (order approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[11] *See* Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (order approving listing on the Exchange of the iShares Silver Trust).

[12] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (order approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[13] *See* the registration statement for the Trust on Form S–1, filed with the Commission on May 27, 2010 (No. 333–167166) ("Registration Statement"). The descriptions of the Trust, the Shares, the Bullion, and the regulation and operation of the commodity markets contained herein are based on the Registration Statement.

[14] The Trustee is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include (1) transferring the Trust's Bullion (silver, platinum and palladium) as needed to pay the Sponsor's Fee in Bullion (Bullion transfers are expected to occur approximately monthly in the ordinary course), (2) valuing the Trust's Bullion and calculating the NAV of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and DTC, (4) selling the Trust's Bullion as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor, (5) when appropriate, making distributions of cash or other property to Shareholders, and (6) receiving and reviewing reports from or on the Custodian's custody of and transactions in the Trust's Bullion.

[15] The Custodian is responsible for safekeeping for the Trust Bullion deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting the Zurich Sub-Custodians and its other subcustodians, if any. The Custodian facilitates the transfer of Bullion in and out of the Trust through the unallocated Bullion accounts it or a Bullion clearing bank will maintain for each Authorized Participant and the unallocated and allocated Bullion accounts it will maintain for the Trust. The Custodian will hold at its London, England vault premises that portion of the Trust's allocated Bullion to be held in London. The Zurich Sub-Custodians will hold at their Zurich, Switzerland vault premises that portion of the Trust's allocated platinum and palladium to be held

Continued

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[16] The Shares will be book-entry only and individual certificates will not be issued for the Shares.

The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include estimated accrued but unpaid fees and expenses). In determining the NAV of the Trust, the Trustee will value the prices of Bullion as determined by the relevant London Fixes.[17] Silver held by the Trust will be valued on the basis of the price of an ounce of silver as set at approximately 12:00 noon London, England time (London PM Fix) and performed in London by three market making members of The London Bullion Market Association ("LBMA"). Platinum held by the Trust will be valued on the basis of the price of an ounce of platinum as set by the afternoon session of the twice daily fix of the price of an ounce of platinum which starts at 2:00 p.m. London, England time (London PM Fix) and is performed in London by the four fixing members of The London Platinum and Palladium Market ("LPPM"). Palladium held by the Trust will be valued on the basis of the price of an ounce of palladium as set by the afternoon session of the twice daily fix of the price of an ounce of palladium which starts at 2:00 PM London, England time (London PM Fix) and is performed in London by the four fixing members of the LPPM.[18] The Trustee will determine the NAV of the Trust on each day the NYSE Arca is open for regular trading, as promptly as practicable after 4 p.m., Eastern Time ("E.T."). If no London PM Fixes are made for silver, platinum or palladium on a particular evaluation day or has not been announced by 4 p.m. E.T. on a particular evaluation day, the next most recent London price fix for such metal or metals will be used in the determination of the NAV of the Trust, unless the Sponsor determines that such price is inappropriate to use as basis for such determination.[19] The Trustee will also determine the NAV per Share, which equals the NAV of the Trust, divided by the number of outstanding Shares.

Market Regulation

According to the Registration Statement, the global silver, platinum and palladium markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA and the LPPM, falls under the authority of the Financial Services Authority (FSA) as provided by the Financial Services and Markets Act 2000 (FSM Act). Under this act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of Bullion not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The Tokyo Commodity Exchange, Inc. ("TOCOM") has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (METI), the regulatory authority that oversees the operations of the TOCOM.[20]

Operation of the Trust

The Trust is a common law trust, formed under New York law pursuant to the Trust Agreement. The Trust holds Bullion and is expected from time to time to issue Baskets in exchange for deposits of Bullion and to distribute Bullion in connection with redemptions of Baskets. The investment objective of the Trust is for the Shares to reflect the performance of the prices of physical silver, platinum and palladium in the proportions held by the Trust, less the Trust's expenses.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the Commodity Exchange Act[21] ("CEA"), as administered by the Commodity Futures Trading Commission ("CFTC"). The Trust is not a commodity pool for purposes of the CEA, and neither the Sponsor nor the Trustee is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

The Trust expects to create and redeem Shares from time to time but only in Baskets of 50,000 each. The number of outstanding Shares is expected to increase and decrease from time to time as a result of the creation and redemption of Baskets. The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of Bullion and any cash represented by the Baskets being created or redeemed. The total amount of Bullion and any cash required for the creation of Baskets will be based on the combined NAV of the number of Baskets being created or redeemed. The initial amount of Bullion required for deposit with the Trust to create Shares will be 50,000 ounces of silver, 500 ounces of platinum and 400 ounces of palladium per Basket.[22] The

in Zurich on behalf of the Custodian. The Custodian is responsible for allocating specific bars of physical silver and specific plates or ingots of physical platinum and palladium to the Trust's allocated Bullion account. The Custodian will provide the Trustee with regular reports detailing the Bullion transfers in and out of the Trust's unallocated and allocated Bullion accounts and identifying the silver bars and the platinum and palladium plates or ingots held in the Trust's allocated Bullion account.

[16] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange of 1934 ("Act") (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[17] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

[18] The operation of the London Fixes for silver, platinum and palladium is described in the registration statements on Form S–1 for the ETFS Silver, Platinum and Palladium Trusts, respectively, and in the Exchange's proposed rule changes pursuant to Rule 19b–4 under the Act in connection with Exchange listing of such Trusts. *See* notes 4–7, *supra.*

[19] See discussion under "Operation of the Trust", infra, regarding procedures used when the Sponsor determines that the Bullion price is inappropriate to use.

[20] Additional information regarding operation of the silver, platinum and palladium markets, and the regulation of these markets, is described in the Registration Statement and in the Commission notices of the Exchange's proposed rule changes regarding listing of the ETFS Trusts. *See* Securities Exchange Act Release Nos. 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (notice and order granting accelerated approval regarding listing of ETFS Silver Trust); 60970 (November 9, 2009), 74 FR 59319 (November 17, 2009) (SR–NYSEArca–2009–95) (notice regarding listing of ETFS Platinum Trust); 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SR–NYSEArca–2009–94) (notice regarding listing of ETFS Palladium Trust).

[21] 7 U.S.C. 1 *et seq.*

[22] As of July 12, 2010, the value of a Basket was approximately $1,835,525. The value of Bullion required for the creation of a Basket was approximately $895,125 for silver ($17.90 per ounce

number of ounces of Bullion required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time. This is because the Shares comprising a Basket will represent a decreasing amount of Bullion due to the delivery or sale of the Trust's Bullion to pay the Sponsor's Fee or the Trust's expenses not assumed by the Sponsor.

The Trustee will determine the NAV of the Trust on each day that the NYSE Arca is open for regular trading, as promptly as practicable after 4:00 p.m., E.T. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Trustee will value the silver held by the Trust based on the London PM Fix price for an ounce of silver or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's silver, the platinum held by the Trust based on the London PM Fix price for an ounce of platinum or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's platinum and the palladium held by the Trust based on the London PM Fix price for an ounce of palladium or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's palladium. The Trustee will also determine the NAV per Share. If on a day when the Trust's NAV is being calculated the London PM Fix is not available or has not been announced by 4:00 p.m., E.T. for any Bullion metal, the price from the next most recent London Fix (AM or PM) for such Bullion metal will be used, unless the Sponsor determines that such price is inappropriate to use.

Investors may obtain on a 24-hour basis silver, platinum and palladium pricing information based on the spot price for an ounce of each Bullion metal from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from physical Bullion dealers. In addition, the Trust's Web site (*http://www.etfsecurities.com*) will provide ongoing pricing information for silver, platinum and palladium spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's Web site.

According to the Registration Statement, the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. The COMEX operates through a central clearance system. On June 6, 2003, TOCOM adopted a similar clearance system.

Secondary Market Trading

According to the Registration Statement, while the Trust's investment objective is for the Shares to reflect the performance of prices of physical silver, platinum and palladium in the proportions held by the Trust, less the expenses of the Trust, the Shares may trade in the secondary market on the NYSE Arca at prices that are lower or higher relative to their NAV per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and COMEX, and the London and Zurich Bullion markets. While the Shares will trade on the NYSE Arca until 8 p.m., E.T., liquidity in the global silver, platinum and palladium markets will be reduced after the close of the COMEX at 1:30 p.m., E.T. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Creation and Redemption of Shares

The Trust will create and redeem Shares from time to time, but only in one or more Baskets of 50,000 Shares. The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of physical silver, platinum and palladium and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

Authorized Participants are the only persons that may place orders to create and redeem Baskets, as described in the Registration Statement.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Creation and redemption orders will be accepted on "business days" the NYSE Arca is open for regular trading. Settlements of such orders requiring receipt or delivery, or confirmation of receipt or delivery, of Bullion in the United Kingdom, Zurich or another jurisdiction will occur on "business days" when (1) banks in the United Kingdom, Zurich and such other jurisdiction and (2) the London and Zurich Bullion markets are regularly open for business. Purchase orders must be placed no later than 3:59:59 p.m. E.T. on each business day the NYSE Arca is open for regular trading. By placing a purchase order, an Authorized Participant agrees to deposit Bullion with the Trust. The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of Bullion and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

Each Creation Basket Deposit, which is the total deposit required to create a Basket, will be an amount of Bullion and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date an order to purchase one or more Baskets is properly received as the number of Shares comprising the number of Baskets to be created in respect of the deposit bears to the total number of Shares outstanding on the date such order is properly received. The Bullion comprising a deposit shall be in a proportion equal to 50,000 ounces of silver, 500 ounces of platinum and 400 ounces of palladium.[23]

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required Bullion deposit amount by the third business day in London or Zurich, as

times 50,000 ounces); $759,000 for platinum ($1,518.00 per ounce times 500 ounces); and $181,400 for palladium ($453.50 per ounce times 400 ounces). These values represent weightings for silver, platinum and palladium in a Basket of approximately 49%, 41%, and 10%, respectively.

[23] The proportion of Bullion comprising a deposit will remain the same following inception of the Trust. The amount of silver, platinum and palladium in the required deposit is determined by dividing the number of ounces of each metal held by the Trust by the number of Baskets outstanding, as adjusted for the amount of Bullion constituting estimated accrued but unpaid fees and expenses of the Trust.

applicable, following the purchase order date. Upon receipt of the Bullion deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer on the third business day following the purchase order date the Bullion deposit amount from the Authorized Participant Unallocated Account to the Trust Unallocated Account and the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of Bullion until such Bullion has been received by the Trust is borne solely by the Authorized Participant.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed no later than 3:59:59 p.m. E.T. on each business day the NYSE Arca is open for regular trading. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket, or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than the third business day following the effective date of the redemption order.

Determination of Redemption Distribution

The redemption distribution from the Trust will consist of a credit to the redeeming Authorized Participant's Authorized Participant Unallocated Account representing the amount of the Bullion held by the Trust evidenced by the Shares being redeemed. Redemption distributions will be subject to the deduction of any applicable tax or other governmental charges which may be due.

Creation and Redemption Transaction Fee

To compensate the Trustee for services in processing the creation and redemption of Baskets, an Authorized Participant will be required to pay a transaction fee to the Trustee of $500 per order to create or redeem Baskets. An order may include multiple Baskets. The transaction fee may be reduced, increased or otherwise changed by the Trustee with the consent of the Sponsor. The Trustee shall notify DTC of any agreement to change the transaction fee and will not implement any increase in the fee for the redemption of Baskets until 30 days after the date of the notice.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than $350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares ("Shareholders") owning at least 75% of the outstanding Shares.

The Trust has no fixed termination date.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Bullion, Definition of Net Asset Value and Adjusted Net Asset Value

On each day that the NYSE Arca is open for regular trading, as promptly as practicable after 4 p.m., E.T. on such day (Evaluation Time), the Trustee will evaluate the Bullion held by the Trust and determine both the Adjusted Net Asset Value ("ANAV"), as defined below, and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's Bullion on the basis of that day's London PM Fix for such metal or, if no London PM Fix is made for a metal on such day or has not been announced by the Evaluation Time, the next most recent London price fix for such metal determined prior to the Evaluation Time will be used, unless the Sponsor determines that such price is inappropriate as a basis for evaluation. In the event the Sponsor determines that the London PM Fix or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's Bullion metal is not an appropriate basis for evaluation of the Trust's Bullion metal, it shall identify an alternative basis for such evaluation to be employed by the Trustee.

Once the value of the Bullion has been determined, the Trustee will subtract all estimated accrued but unpaid fees (other than the fees accruing for such day on which the valuation takes place computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of the Bullion and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

Liquidity

Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's "buy" and "sell" prices. The period of greatest liquidity in the Bullion markets generally occurs at the time of day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York, Zurich and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four hours each New York business day morning.

Availability of Information Regarding Bullion Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of commodities such as silver, platinum and palladium over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of Bullion market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis Bullion pricing information based on the spot price for an ounce of Bullion from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of Bullion and last sale prices of Bullion futures, as well as information about news and developments in the Bullion market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides

information on Bullion prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot Bullion, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for Bullion futures and options prices traded on COMEX are available by subscription from Reuters and Bloomberg. COMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on Bullion, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at [sic] or *http://www.thebulliondesk.com.*

The Trust's Web site will provide an intraday indicative value ("IIV") per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., E.T.). The IIV is calculated by multiplying the indicative spot price of Bullion by the quantity of Bullion backing each Share as of the last calculation date. The Trust's Web site will also provide the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The NAV as of the close of the prior business day and the mid-point of the bid-ask price [24] at the close of trading in relation to such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the following information: The Creation Basket Deposit, the Trust's prospectus, and as the two most recent reports to stockholders. Finally, the Trust's Web site will also provide the last sale price of the Shares as traded in the U.S. market. The Exchange will provide on its Web site (*http://www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares Silver Trust, the ETF Trusts and exchange-traded funds. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the applicable underlying Bullion, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments. (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying Bullion market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[25] In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[26]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying Bullion, Bullion futures contracts, options on Bullion futures, or any other Bullion derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP

[24] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[25] The Exchange, pursuant to NYSE Arca Equities Rule 7.12, has discretion to halt trading in the Shares if the London Fixes are not determined for an extended time period based on extraordinary circumstances or market conditions.

[26] *See* NYSE Arca Equities Rule 7.12.

Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.[27] COMEX is an ISG member.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of Bullion trading during the Core and Late Trading Sessions after the close of the major world Bullion markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical Bullion, that the Commission has no jurisdiction over the trading of Bullion as physical commodities, and that the CFTC has regulatory jurisdiction over the trading of Bullion futures contracts and options on Bullion futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[28] of the Act, in general, and furthers the objectives of Section 6(b)(5),[29] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–71 and should be submitted on or before August 27, 2010.

[27] A list of ISG members is available at [sic]. The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market. In addition, the Exchange does not have access to information regarding Bullion-related OTC transactions in spot, forwards, options or other derivatives.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19373 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62608; File No. SR–FINRA–2010–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Stated Interpretation of the Meaning, Administration, and Enforcement of FINRA Rule 11892 and Supplementary Material .01

July 30, 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 July 29, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a stated interpretation of the meaning, administration, and enforcement of FINRA Rule 11892 and Supplementary Material .01.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In light of recent market events, some exchanges have adopted interpretations to their clearly erroneous rules regarding (1) the range of transactions subject to review and potential nullification and (2) the date by which clearly erroneous determinations must be made.[5] FINRA is filing the proposed rule change to make clear that it will defer to an exchange's interpretation of its clearly erroneous authority in deciding which over-the-counter trades in exchange-listed securities are subject to nullification under FINRA Rule 11892.

FINRA Rule 11892(a)(1) provides that, in the event of a determination by a national securities exchange to nullify one or more transactions in a security traded on such national securities exchange, certain FINRA staff may review any similarly situated transaction(s) reported through a FINRA system in such security and declare the transaction(s) null and void. Supplementary Material .01 to FINRA Rule 11892 states that "FINRA will generally follow the determination of a national securities exchange to break a trade(s) when [the] national securities exchange has broken a trade(s) at or near the price range in question at or near the time in question * * * such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection." These provisions were adopted to ensure consistent and transparent determinations of clearly erroneous transactions.[6] To promote consistency among self-regulatory organizations, FINRA believes it is necessary to defer to exchanges' interpretations of their clearly erroneous rules when FINRA makes determinations of whether to cancel similarly situated over-the-counter transactions in exchange-listed securities under FINRA Rule 11892(a)(1). Consequently, when making clearly erroneous determinations under FINRA Rule 11892(a)(1) and Supplementary Material .01, FINRA will follow the interpretations of exchanges regarding the range of transactions subject to review, and potential nullification, as clearly erroneous and the date by which determinations must be made.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed stated interpretation clarifies that FINRA will exercise its authority to declare over-the-counter transactions in exchange-listed securities null and void under FINRA Rule 11892 and Supplementary Material .01 consistent with decisions made by the exchange(s) trading such securities. FINRA believes that such an interpretation promotes just and equitable principles of trade because it ensures consistent application of clearly erroneous determinations across markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(1)[9] thereunder. At any time within the 60-day period beginning on the date

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* SR–NYSE–2010–55.

[6] *See* Securities Exchange Act Release No. 61080 (December 1, 2009), 74 FR 64117 (December 7, 2009) (order approving SR–FINRA–2009–068).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–FINRA–2010–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at FINRA's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–038 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary

[FR Doc. 2010–19331 Filed 8–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62618; File No. SR–NASDAQ–2010–088]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Routing to Away Markets

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 2, 2010.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.[3]

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1)–(3) No Change.

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com website.

Exchange	Customer	Firm	MM
BATS	$0.36	$0.55	$0.55
BOX	$0.06	$0.55	$0.55
CBOE	$0.06	$0.55	$0.55
ISE	$0.06	$0.55	$0.55
ISE Select Symbols* of 100 or more contracts	$0.26	$0.55	$0.55
NYSE Arca Penny Pilot	$0.50	$0.55	$0.55
NYSE Arca Non Penny Pilot	$0.06	$0.55	$0.55
NYSE AMEX	$0.06	$0.55	$0.55
PHLX (for all options other than *PHLX Select Symbols* [the below listed options])	$0.06	$0.55	$0.55

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed text reflects recent amendments to Rule 7050, specifically proposed rule change SR–NASDAQ–2010–090.

PHLX *Select Symbols**** [(for the following options only): AA, AAPL, ABK, ABX, AIG, ALL, AMD, AMR, AMZN, ARIA, AXP, BAC, BRCD, C, CAT, CIEN, CIGX, CSCO, DELL, DIA, DNDN, DRYS, EBAY, EK, F, FAS, FAZ, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, IYR, JPM, LVS, MGM, MOT, MSFT, MU, NEM, NOK, NVDA, ONNN, ORCL, PALM, PFE, POT, QCOM, QID, QQQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TBT, TZA, UAUA, UNG, USO, UYG, V, VALE, VZ, WYNN, X, XHB, XLF, XRX and YHOO]	$0.30	$0.55	$0.55

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

*** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.*

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqomx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on away markets ("routing fees"). NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. NOM currently assesses customers a fee of $0.30 and Firms and Market Makers a fee of $0.55 for routing options orders to NASDAQ OMX PHLX, Inc. ("PHLX") in certain select symbols that are subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols.[4] The Exchange proposes to modify Rule 7050 by titling those fees "PHLX Select Symbols" and adding clarifying language to indicate those fees would be subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols, rather than listing all of the option symbols that are subject to those fees. The Exchange is proposing to amend the title in Rule 7050 so that the PHLX select symbols fees would apply to all of the symbols in PHLX's list of symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols.[5]

The Exchange also proposes to amend text in Rule 7050 to clarify that orders which are currently subject to "PHLX (for all options other than the below listed options)" routing fees would be renamed to state "PHLX (for all options other than PHLX Select Symbols)" to clarify that these fees would continue to apply to all orders routed to PHLX and not subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols.[6]

NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets, NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange collects fees for routing to away markets in order to recoup clearing and transaction charges incurred by the Exchange when such orders are routed to various destination markets. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 2, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The Exchange believes that the proposed fee changes are reasonable because the Exchange is seeking to recoup the costs incurred for options orders entered into NOM but routed to and executed on PHLX in any symbol subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols. This proposal would continue to apply to all of the PHLX Select Symbols, as defined on PHLX's Fee Schedule, going forward rather than listing each symbol in Rule 7050. The Exchange believes this amendment to Rule 7050 is reasonable because it continues to assess the same fees for routing orders to PHLX which are subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols. This proposal is simply renaming those routing fees without changing the fees. Also, the proposal is equitable because the fees assessed to Customers, Firms and Market Makers will continue to apply to those market participants and the modifications to the title of the PHLX Select Symbols routing fees will

[4] NOM currently assesses the aforementioned rates in the following symbols: AA, AAPL, ABK, ABX, AIG, ALL, AMD, AMR, AMZN, ARIA, AXP, BAC, BRCD, C, CAT, CIEN, CIGX, CSCO, DELL, DIA, DNDN, DRYS, EBAY, EK, F, FAS, FAZ, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, IYR, JPM, LVS, MGM, MOT, MSFT, MU, NEM, NOK, NVDA, ONNN, ORCL, PALM, PFE, POT, QCOM, QID, QQQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TBT, TZA, UAUA, UNG, USO, UYG, V, VALE, VZ, WYNN, X, XHB, XLF, XRX and YHOO.

[5] PHLX recently filed a proposed rule change to add the following four options to the Phlx's list of symbols subject to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols: BP p.l.c. Common Stock ("BP"), Baidu, Inc. ("BIDU"), IShares FTSE/Xinhua China 25 Index ("FXI") and Exxon Mobil Corp. ("XOM") and also remove the following three options: ARIAD Pharmaceuticals, Inc. ("ARIA"), Star Scientific, Inc. ("CIGX") and Palm, Inc. ("PALM") from its list of Select Symbols. *See* SR–Phlx–2010–98. All symbols subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols will be referred to as "PHLX Select Symbols."

[6] Currently NOM assesses $0.06 for Customers and $0.55 for Firms and Market Makers for routing orders to PHLX which are not subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

be uniformly applied to each of these participants.

NASDAQ is one of eight options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and paragraph (f)(2) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–088 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–088. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–088 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19370 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62616; File No. SR–Phlx–2010–103]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 22, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on August 2, 2010.[3] The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 60966 (November 9, 2009), 75 FR 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR–Phlx–2010–65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] *See* Rule 1034 regarding the Penny Pilot.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective August 2, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,[5] the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six-month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on August 2, 2010, based on ADVs for the six months ending June 30, 2010.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
199	MBI	MBIA Inc.	316	CB	Chubb Corp.
205	MA	Mastercard Inc.	320	ADM	Archer-Daniels-Midland Co.
224	ATPG	ATP Oil & Gas Corp/United States.	322	HSY	Hershey Co./The
226	YUM	Yum! Brands Inc.	323	TXT	Textron Inc.
232	RCL	Royal Caribbean Cruises Ltd.	324	GGP	General Growth Properties Inc.
238	BPOP	Popular Inc.	325	NOV	National Oilwell Varco Inc.
248	EK	Eastman Kodak Co.	326	TWX	Time Warner Inc.
252	CNX	Co.nsol Energy Inc.	327	XOP	SPDR S&P Oil & Gas Exploration & Production ETF.
260	DCTH	Delcath Systems Inc.	328	MYL	Mylan Inc./PA/
274	MTG	MGIC Investment Corp.	329	TSO	Tesoro Corp.
277	PXP	Plains Exploration & Production Co.	330	CI	CIGNA Corp.
278	GPS	Gap Inc./The	331	ESI	ITT Educational Services Inc.
280	TSL	Trina Solar Ltd.	332	NKE	NIKE Inc.
282	EWW	iShares MSCI Mexico Investable Market Index Fund	335	FIS	Fidelity National Information Services Inc.
283	CRM	Salesforce.com Inc.	336	SUN	Sunoco Inc.
286	SWN	Southwestern Energy Co.	338	BBBY	Bed Bath & Beyond Inc.
287	HBAN	Huntington Bancshares Inc./OH	340	APWR	A-Power Energy Generation Systems Ltd.
288	EOG	EOG Resources Inc.	341	FWLT	Foster Wheeler AG.
290	APA	Apache Corp	342	LNC	Lincoln National Corp.
291	VVUS	Vivus Inc.	343	RSH	RadioShack Corp.
292	JDSU	JDS Uniphase Corp	344	TYC	Tyco International Ltd.
293	ACI	Arch Coal Inc.	345	CL	Colgate-Palmolive Co.
294	NE	Noble Corp	346	FXP	ProShares UltraShort FTSE/Xinhua China 25.
296	BAX	Baxter International Inc.	347	NTAP	NetApp Inc.
297	ADSK	Autodesk Inc.	348	SO	Southern Co.
299	KRE	SPDR KBW Regional Banking ETF	349	PHM	Pulte Group Inc.
300	XL	XL Group Plc	350	HOT	Starwood Hotels & Resorts Worldwide Inc.
302	WLT	Walter Energy Inc.	351	QLD	ProShares Ultra QQQ.
303	IBN	ICICI Bank Ltd.	352	VRSN	VeriSign Inc.
305	EWY	iShares MSCI South Korea Index Fund	353	PCL	Plum Creek Timber Co. Inc.
306	WHR	Whirlpool Corp.	354	NBR	Nabors Industries Ltd.
307	BHI	Baker Hughes Inc.	355	ESRX	Express Scripts Inc.
308	KMP	Kinder Morgan Energy Partners LP.	356	ACAS	American Capital Ltd.
309	MRO	Marathon Oil Corp.	357	XLNX	Xilinx Inc.
310	AGO	Assured Guaranty Ltd.	358	DO	Diamond Offshore Drilling Inc.
311	GIS	General Mills Inc.	359	CMA	Comerica Inc.
312	ANR	Alpha Natural Resources Inc.	360	KEY	KeyCorp.
314	GENZ	Genzyme Corp.			

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[5] *See* Securities Exchange Act Release No. 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) [8] of the Act and Rule 19b–4(f)(1) [9] thereunder as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–103 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19371 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62624; File No. SR–NFA–2010–02]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Changes to Interpretive Notice Entitled "NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts"

August 2, 2010.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-7 under the Act,[2] notice is hereby given that on July 8, 2010, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed this proposed rule change concurrently with the Commodity Futures Trading Commission ("CFTC").

On July 8, 2010, NFA requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. On July 26, 2010, the CFTC notified NFA of its determination not to review the proposed rule change.[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The amendment to the Interpretive Notice entitled "NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts" updates the document to reflect the treatment of dividends for a new class of security futures contracts that did not exist at the time the Interpretive Notice was adopted. Specifically, the amendment indicates that price adjustments for ordinary dividends may be made for a specified class of security futures contracts based on the rules of the exchange and the clearing organization.

The text of the proposed rule change is available on NFA's Web site at *http://www.nfa.futures.org,* at the principal office of NFA 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, NFA 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. NFA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15A(k) of the Act [4] makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members ("Members") who are registered as brokers or dealers under Section 15(b)(11) of the Act.[5] NFA Interpretive Notice entitled "NFA

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter from William Penner, Deputy Director, CFTC to Thomas W. Sexton, Senior Vice President and General Counsel, NFA, dated July 26, 2010.

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o(b)(11).

Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts" applies to all NFA Members and Associates, including those who are registered as security futures brokers or dealers under Section 15(b)(11).

NFA Compliance Rule 2–30(b) requires NFA Members and Associates who are registered as brokers or dealers under Section 15(b)(11) of the Act to provide a Risk Disclosure statement for security futures contracts to a customer at or before the time the Member approves the account to trade security futures products. The Risk Disclosure statement is a uniform statement that was jointly developed in 2002 by NFA, the National Association of Securities Dealers, Inc. (now known as the Financial Industry Regulatory Authority, Inc.), and a number of securities and futures exchanges. Among other things, this Risk Disclosure statement describes the features of a security futures product as those features existed in 2002. Specifically, the Risk Disclosure statement indicates that there are generally no adjustments for dividends because the dividends are accounted for in the pricing of the security futures.

Recently, One Chicago LLC (OCX), an exchange listing security futures products, developed and plans to list a new class of security futures products whose dividend feature differs from the dividend feature described in the Risk Disclosure statement. In particular, the new product will adjust for any declared dividends because the dividend is not accounted for in the pricing of the security futures product. In order to ensure that the Risk Disclosure statement accurately reflects the dividend feature of this new product, the Interpretive Notice, which sets forth the Risk Disclosure statement, has been amended to indicate that price adjustments for ordinary dividends may be made for a specified class of security futures contracts based on the rules of the exchange and the clearing organization.

Amendments to the Interpretive Notice entitled "NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts" were previously filed with the SEC in SR–NFA–2002–05, SR–NFA–2002–06 and SR–NFA–2007–07.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Act.[6] That Section requires NFA to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, which includes rules governing sales practices of security futures products. The proposed rule change accomplishes this by ensuring that the Risk Disclosure Statement for Security Futures Contracts, which NFA Members registered as a broker or dealer under Section 15(b)(1) of the Exchange Act are required to provide to a customer at or before the time the Member approves the account to trade security futures products, accurately describes the dividend features of all classes of security futures products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have little or no impact on competition since the amendments to the Interpretive Notice do not impose any new requirements on Members. Rather, the amendments merely revise the language in the Interpretive Notice to accurately reflect the dividend feature of a class of security futures products that was not available at the time the Interpretive Notice was adopted.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule change to its membership for comment. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On July 26, 2010, the CFTC notified NFA that it had determined not to review the proposed rule change and, therefore, NFA is permitted to make the amendments effective as of this date.[7] At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) 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–NFA–2010–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NFA–2010–02. 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 NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NFA–2010–02 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19372 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78o–3(k)(2)(B).

[7] *See* note 3.

[8] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62614; File No. SR–NASDAQ–2010–093]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Nasdaq Rule 7017(b)

July 30, 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 July 27, 2010, the NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Nasdaq Rule 7017(b) to establish on a permanent basis a reduced user fee for non-professional users of the National Quotation Dissemination Service.

The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

7017. National Quotation Data Service (NQDS)

(a) No Change.

(b) [For a pilot period ending December 31, 2007, t] *T*he charge to be paid by a non-professional for each interrogation or display device receiving all or any portion of the NQDS information disseminated through an authorized vendor shall be $10.00 per month.

(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ disseminates market data feeds in two capacities. First, NASDAQ disseminates consolidated or "core" data in its capacity as Securities Information Processor ("SIP") for the national market system plan governing securities listed on NASDAQ as a national securities exchange ("NASDAQ UTP Plan").[3] Second, NASDAQ separately disseminates proprietary or "non-core" data in its capacity as a registered national securities exchange. Non-core data is any data generated by the NASDAQ Market Center Execution System that is voluntarily disseminated by NASDAQ separate and apart from the consolidated data.[4] NASDAQ has numerous proprietary data products, such as NASDAQ TotalView, NASDAQ Last Sale, and NASDAQ Basic.

The National Quotation Dissemination Service ("NQDS") is a proprietary data product that contains the best bid and offer quotation of each registered market maker quoting in NASDAQ-listed securities on the NASDAQ Stock Market. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms.

Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professional and non-professional users alike. In August 2000, NASDAQ filed a proposed rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data. The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis.[5] On September 5, 2001, August 29, 2002, August 15, 2003, and August 20, 2004, January 24, 2006, and April 25, 2007, NASDAQ filed proposed rule changes to extend the pilot for additional one-year periods.[6] Thus, the non-professional fee for NQDS has remained unchanged for roughly 10 years.

NASDAQ is proposing to establish the fee-reduction on a permanent basis beginning August 1, 2010.[7] NASDAQ has consistently supported broad, effective dissemination of market information to public investors. NASDAQ notes that the existing proposed fee represents a reduction by 80% of the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates NASDAQ's continued commitment to individual investors and responds to the demand for real-time market data by non-professional market participants. In addition, NASDAQ member firms often supply real-time market data to their customers through automated means. Thus, NASDAQ member firms' customers will benefit from the continued fee reduction.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions and encourages increased public participation in the securities markets.

NQDS is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and

[3] *See* Securities Exchange Act Release No. 59039 (Dec. 2, 2008) at p. 41.

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 43190 (Aug. 22, 2000); 65 FR 52460 (Aug. 29, 2000).

[6] *See* Securities Exchange Act Release No. 44788 (Sept. 13, 2001); 66 FR 48303 (Sept. 19, 2001). Securities Exchange Act Release No. 46446 (Aug. 30, 2002); 67 FR 57260 (Sept. 9, 2002). Securities Exchange Act Release No. 48386 (Aug. 21, 2003); 68 FR 51618 (Aug. 27, 2003). Securities Exchange Act Release No. 50318 (Aug. 3, 2004); 69 FR 54821 (Sept. 10, 2004); Securities Exchange Act Release No. 53531 (Mar. 21, 2006); 71 FR 15506 (Mar. 28, 2006); Securities Exchange Act Release No. 55668 (Apr. 25, 2007); 72 FR 24347 (May 2, 2007).

[7] NASDAQ is simultaneously filing a proposal for authority retroactively to apply the NQDS non-professional fee pilot for the period from December 31, 2007 through August 1, 2010. *See* SR–NASDAQ–2010–094 (July 27, 2010). NASDAQ previously sought authority retroactively to assess the NQDS non-professional fee from December 31, 2007 going forward. *See* SR–NASDAQ–2009–055.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[10]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price NQDS is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary quotation data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders that exist in the marketplace.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated quotation data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it constrains the fees assessed for proprietary data (such as NQDS data). The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are included in the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS publishes certain data at no charge on its Web site and via data feeds in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.[11] A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson.

In continuing the current price for NQDS, NASDAQ considered the competitiveness of the market for quotation data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[11] However, BATS recently received approval to begin offering and charging for three new data products, which include BATS Last Sale Feed, BATS Historical Data Products, and a data product called BATS Market Insight. *See* Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR–BATS–2010–002).

unreasonably discriminatory fee and an equitable allocation of fees among all users. The existence of numerous alternatives to NQDS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NQDS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As the Commission has recognized,[12] the market for transaction execution and routing services is highly competitive. Broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-regulatory organization markets, as well as broker-dealers and aggregators such as electronic communications networks. A member firm is able to select any venue of which it is a member or participant to send its order flow. As such, if member firms believe that the proposed fee for Supplemental MPIDs is excessive they may easily choose to move their order flow elsewhere. NASDAQ believes that its proposed fees are comparable to fees assessed by the NYSE for market access, but are set at lower levels than the corresponding NYSE fees. NASDAQ also believes that the proposed fee will encourage efficiency in member firms' use of MPIDs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[12] Specifically, the Commission stated: "Exchanges compete not only with one another, but also with broker-dealers that match customer orders within their own systems and also with a proliferation of alternative trading systems ('ATSs') and electronic communications networks ('ECNs') that the Commission has also nurtured and authorized to execute trades in any listed issue. As a result, market share of trading fluctuates among execution facilities based on their ability to service the end customer. The execution business is highly competitive and exhibits none of the characteristics of a monopoly * * * ." Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74775 (December 9, 2008) (SR–NYSEArca-2006–21).

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)[13] of the Act. At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–093 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–093. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–093 and should be submitted on or before August 27, 2010.

[13] 15 U.S.C. 78s(b)(3)(A).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19333 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62617; File No. SR–NASDAQ–2010–092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 22, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on August 2, 2010.[3] The Exchange is not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008),

proposing to amend any rule text, but simply administering or enforcing an existing rule.[4]

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective August 2, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,[5] the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six-month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on August 2, 2010, based on ADVs for the six months ending June 30, 2010.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
199	MBI	MBIA Inc.	316	CB	Chubb Corp.
205	MA	Mastercard Inc.	320	ADM	Archer-Daniels-Midland Co.
224	ATPG	ATP Oil & Gas Corp/United States	322	HSY	Hershey Co./The
226	YUM	Yum! Brands Inc	323	TXT	Textron Inc.
232	RCL	Royal Caribbean Cruises Ltd.	324	GGP	General Growth Properties Inc.
238	BPOP	Popular Inc.	325	NOV	National Oilwell Varco Inc.
248	EK	Eastman Kodak Co.	326	TWX	Time Warner Inc.
252	CNX	Consol Energy Inc.	327	XOP	SPDR S&P Oil & Gas Exploration & Production ETF.
260	DCTH	Delcath Systems Inc.	328	MYL	Mylan Inc./PA.
274	MTG	MGIC Investment Corp.	329	TSO	Tesoro Corp.
277	PXP	Plains Exploration & Production Co.	330	CI	CIGNA Corp.
278	GPS	Gap Inc./The	331	ESI	ITT Educational Services Inc.
280	TSL	Trina Solar Ltd.	332	NKE	NIKE Inc.
282	EWW	iShares MSCI Mexico Investable Market Index Fund	335	FIS	Fidelity National Information Services Inc.
283	CRM	Salesforce.com Inc.	336	SUN	Sunoco Inc.
286	SWN	Southwestern Energy Co.	338	BBBY	Bed Bath & Beyond Inc.
287	HBAN	Huntington Bancshares Inc./OH	340	APWR	A–Power Energy Generation Systems Ltd.
288	EOG	EOG Resources Inc.	341	FWLT	Foster Wheeler AG.
290	APA	Apache Corp.	342	LNC	Lincoln National Corp.
291	VVUS	Vivus Inc.	343	RSH	RadioShack Corp.
292	JDSU	JDS Uniphase Corp.	344	TYC	Tyco International Ltd.
293	ACI	Arch Coal Inc.	345	CL	Colgate-Palmolive Co.
294	NE	Noble Corp.	346	FXP	ProShares UltraShort FTSE/Xinhua China 25.
296	BAX	Baxter International Inc.	347	NTAP	NetApp Inc.
297	ADSK	Autodesk Inc.	348	SO	Southern Co.
299	KRE	SPDR KBW Regional Banking ETF	349	PHM	Pulte Group Inc.
300	XL	XL Group Plc	350	HOT	Starwood Hotels & Resorts Worldwide Inc.
302	WLT	Walter Energy Inc.	351	QLD	ProShares Ultra QQQ.
303	IBN	ICICI Bank Ltd.	352	VRSN	VeriSign Inc.
305	EWY	iShares MSCI South Korea Index Fund	353	PCL	Plum Creek Timber Co. Inc.
306	WHR	Whirlpool Corp.	354	NBR	Nabors Industries Ltd.
307	BHI	Baker Hughes Inc.	355	ESRX	Express Scripts Inc.
308	KMP	Kinder Morgan Energy Partners LP	356	ACAS	American Capital Ltd.
309	MRO	Marathon Oil Corp.	357	XLNX	Xilinx Inc.
310	AGO	Assured Guaranty Ltd.	358	DO	Diamond Offshore Drilling Inc.
311	GIS	General Mills Inc.	359	CMA	Comerica Inc.
312	ANR	Alpha Natural Resources Inc.	360	KEY	KeyCorp.

73 FR 18587 (April 4, 2008)(SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] *See* Chapter VI, Section 5 regarding the Penny Pilot.

[5] *See* Securities Exchange Act Release No. 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness).

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
314	GENZ	Genzyme Corp.			

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(1)[9] thereunder as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–092. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–092 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19334 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62602; File No. SR–CBOE–2010–069]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Minor Rule Violation Plan

July 24, 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 July 20, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 17.50—*Imposition of Fines for Minor Rule Violations.* The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/Legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 2009, the U.S. Securities and Exchange Commission ("Commission") approved a CBOE rule filing amending Rule 17.50—*Imposition of Fines for Minor Rule Violations*.[5] Among other things, the rule filing incorporated a number of additional violations into CBOE's Minor Rule Violation Plan.[6] However, that filing did not add references to those additional violations to Rule 17.50(c)(1), which sets forth the procedures for the appeal of certain fines imposed under the Minor Rule Violation Plan. The Exchange is proposing to add the subsections that were added to the Minor Rule Violation Plan in August 2009 to Rule 17.50(c)(1) to allow for the same appeal process for these additional violations.

In addition, CBOE proposes to revise Rule 17.50(g)(2) to incorporate violations relating to the late filing of monthly and quarterly FOCUS reports into the Minor Rule Violation Plan. Rule 17.50(g)(2) currently sets forth the fine schedule for the failure to file annual FOCUS reports on Form X–17A–5 in accordance with Rule 17a–10[7] under the Securities and Exchange Act of 1934 ("Exchange Act"). CBOE proposes to expand this provision to include violations for failure to file FOCUS reports on Form X–17A–5 in accordance with Rule 17a–5[8] under the Exchange Act. Thus, a Trading Permit Holder that submits a late monthly or quarterly FOCUS filing shall be assessed a fine between $200 and $800 pursuant to the minor rule violation plan depending on the number of days the FOCUS filing is late. If a Trading Permit Holder submits a FOCUS filing more than ninety days late, the Exchange will refer the matter to the Business Conduct Committee. CBOE notes that the minor rule violation plan in place at the NYSE AMEX LLC ("AMEX") currently includes fines for similar violations under Exchange Act Rules 17a–5 and 17a–10.[9]

The Exchange also recently revised its order handling rules in connection with a new options industry linkage structure.[10] Prior to that rule change, Rule 6.83 governed Order Protection and Rule 6.84 governed Locked or Crossed Markets. However, this amendment revised the rule numbers such that Rule 6.81 now governs Order Protection and Rule 6.82 governs Locked or Crossed Markets. However, the Exchange inadvertently failed to update references to those Rules in CBOE Rule 17.50(g)(12) and 17.50(g)(13), which set forth the fines for Order Protection Violations and Locked or Crossed Market Violations, respectively, under the Exchange's Minor Rule Violation Plan. The Exchange is proposing to modify these rule references such that Rule 17.50(g)(12) refers to Rule 6.81 and Rule 17.50(g)(13) refers to Rule 6.82.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[11] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule changes will strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its surveillance and enforcement functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposed change makes technical changes to the rule, clarifies minor omissions from the rule based on recent rule changes, and is generally consistent with the rules of another exchange.[16] Therefore, the Commission designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[5] *See* Securities Exchange Act Release No. 34–60488 (August 12, 2009), 74 FR 42139 (August 20, 2009) (SR–CBOE–2009–037).

[6] *See* CBOE Rule 17.50(g)(11)–(g)(18).

[7] 17 CFR 240.17a–10.

[8] 17 CFR 240.17a–5.

[9] *See* Parts 3(a) and 3(g)(A) of AMEX Rule 590.

[10] *See* Securities Exchange Act Release No. 34–60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR–CBOE–2009–040).

[11] 15 U.S.C. 78a *et seq.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[16] *See* Parts 3(a) and 3(g)(A) of AMEX Rule 590.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2010–069 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–2010–069. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–069 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–19332 Filed 8–5–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 7101]

In the Matter of the Designation of Harakat-ul Jihad Islami, Also Known as HUJI, Also Known as Movement of Islamic Holy War, Also Known as Harkat-ul-Jihad-al Islami, Also Known as Harkat-al-Jihad-ul Islami, Also Known as Harkat-ul-Jehad-al-Islami, Also Known as Harakat ul Jihad-e-Islami, Also Known as Harakat-ul Jihad Islami, as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA") (8 U.S.C. 1189), exist with respect to Harakat-ul Jihad Islami, also known as HUJI, also known as Movement of Islamic Holy War, also known as Harkat-ul-Jihad-al Islami, also known as Harkat-al-Jihad-ul Islami, also known as Harkat-ul-Jehad-al-Islami, also known as Harakat ul Jihad-e-Islami, also known as Harakat-ul Jihad Islami.

Therefore, I hereby designate the aforementioned organization and its aliases as a Foreign Terrorist Organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: May 18, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–19446 Filed 8–5–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7102]

In the Matter of the Designation of Harakat-ul Jihad Islami, Also Known as HUJI, Also Known as Movement of Islamic Holy War, Also Known as Harkat-ul-Jihad-al Islami, Also Known as Harkat-al-Jihad-ul Islami, Also Known as Harkat-ul-Jehad-al-Islami, Also Known as Harakat ul Jihad-e-Islami, Also Known as Harakat-ul Jihad Islami, as a Specially Designated Global Terrorist Pursuant, to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as Harakat-ul Jihad Islami, also known as HUJI, also known as Movement of Islamic Holy War, also known as Harkat-ul-Jihad-al Islami, also known as Harkat-al-Jihad-ul Islami, also known as Harkat-ul-Jehad-al-Islami, also known as Harakat ul Jihad-e-Islami, also known as Harakat-ul Jihad Islami, committed or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: May 18, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–19444 Filed 8–5–10; 8:45 am]

BILLING CODE 4710–10–P

[18] 17 CFR 200.30–3(a)(12) and 200.30–3(a)(44).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers and Reports on Sanitary and Phytosanitary and Standards-Related Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241), the Office of the United States Trade Representative (USTR) is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested persons to submit comments to assist it in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the NTE.

Once again, the TPSC is requesting that comments on standards-related measures and sanitary and phytosanitary (SPS) measures that create barriers to U.S. exports be submitted separately from other NTE comments. This will assist USTR in updating two reports issued for the first time in 2010 highlighting SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports. These reports were published as the 2010 Report on Sanitary and Phytosanitary Measures (2010 SPS Report) and the 2010 Report on Technical Barriers to Trade (2010 TBT Report) respectively. The TPSC invites written comments from the public on issues that USTR should examine in preparing the NTE and the reports on SPS and standards-related measures.

DATES: Public comments are due not later than October 4, 2010.

ADDRESSES: Submissions should be made via the Internet at *www.regulations.gov* under the following dockets (based on the subject matter of the submission):

SPS Measures: USTR–2010–0020.

Standards-Related Measures: USTR–2010–0021.

All Other Measures: USTR–2010–0022.

For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, USTR (202–395–3475). The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the NTE or on submitting comments in response to this notice should be directed to Gloria Blue at (202) 395–3475. Questions regarding the SPS report or substantive questions concerning comments on SPS measures should be directed to Jane Doherty, Director of Sanitary and Phytosanitary Affairs, USTR (202–395–6127). Questions regarding the report on standards-related measures or substantive questions concerning comments on those measures should be directed to Jeff Weiss, Senior Director, Technical Barriers to Trade, USTR (202–395–4498).

SUPPLEMENTARY INFORMATION: The NTE sets out an inventory of the most important foreign barriers affecting U.S. exports of goods and services, U.S. foreign direct investment, and protection of intellectual property rights. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws and strengthening the rules-based trading system. The 2010 NTE, SPS, and TBT Reports may be found on USTR's Internet Home Page (*http://www.ustr.gov*) under the tab "Reports".

To ensure compliance with the NTE's statutory mandate and the Obama Administration's commitment to focus on the most significant foreign trade barriers, USTR will be guided by the existence of active private sector interest in deciding which restrictions to include in the NTE and the reports on SPS and standards-related measures.

Topics on which the TPSC Seeks Information: To assist USTR in preparing the NTE and the reports on SPS and standards-related measures, commenters should submit information related to one or more of the following categories of foreign trade barriers:

(1) Import policies (*e.g.,* tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) SPS measures;

(3) Standards-related measures (including standards, technical regulations, and conformity assessment procedures);

(4) Government procurement restrictions (*e.g.,* "buy national policies" and closed bidding);

(5) Export subsidies (*e.g.,* export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(6) Lack of intellectual property protection (*e.g.,* inadequate patent, copyright, and trademark regimes);

(7) Services barriers (*e.g.,* limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals);

(8) Investment barriers (*e.g.,* limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties);

(9) Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets;

(10) Trade restrictions affecting electronic commerce (*e.g.,* tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

(11) Other barriers (*e.g.,* barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector).

Reports on SPS and Standards-Related Measures: On March 31, 2010, USTR published two new reports on foreign trade barriers—one on SPS measures and the other on standards-related measures. These reports serve as tools to bring greater attention and focus to resolving SPS and standards-related measures that may be inconsistent with international trade agreements to which the United States is a party or that otherwise act as significant foreign barriers to U.S. exports. USTR plans to use comments on SPS and standards-related measures (items 2 and 3 in the list above) submitted pursuant to this notice in producing these two reports. To help USTR identify SPS and standards-related measures to include in the reports, comments concerning those measures should be submitted separately from those addressing other foreign trade barriers. (See below).

The following information describing SPS and standards-related measures may help commenters to file submissions on particular foreign trade barriers under the appropriate docket.

SPS Measures: Generally, SPS measures are measures applied to protect the life or health of humans, animals, and plants from risks arising from additives, contaminants, pests, toxins, diseases, or disease-carrying and causing organisms. SPS measures can

take such forms as specific product or processing standards, requirements for products to be produced in disease-free areas, quarantine regulations, certification or inspection procedures, sampling and testing requirements, health-related labeling measures, maximum permissible pesticide residue levels, and prohibitions on certain food additives.

Standards-Related Measures: Standards-related measures comprise standards, technical regulations, and conformity assessment procedures, such as mandatory process or design standards, labeling or registration requirements, and testing or certification procedures. Standards-related measures can be applied not only to industrial products but to agricultural products as well, such as food nutrition labeling schemes and food quality or identity requirements.

For further information on SPS and standards-related measures and additional detail on the types of comments that would assist USTR in identifying and addressing significant trade-restrictive SPS and standards-related measures, *please see* "Supporting & Related Materials" under dockets USTR–2010–0020 and USTR–2010–0021 at *www.regulations.gov.* The 2010 SPS and TBT Reports also contain extensive information on SPS and standards-related measures that commenters may find useful in preparing comments in response to this notice.

In responding to this notice with respect to any of the three reports, commenters should place particular emphasis on any practices that may violate U.S. trade agreements. The TPSC is also interested in receiving new or updated information pertinent to the barriers covered in the 2010 NTE and the reports on SPS and standards-related measures as well as information on new barriers. If USTR does not include in the NTE or the reports on SPS and standards-related measures information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

Estimate of Increase in Exports: Each comment should include an estimate of the potential increase in U.S. exports that would result from removing any foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Estimates should be expressed within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. These estimates will help USTR conduct comparative analyses of a barrier's effect over a range of industries.

Requirements for Submissions: Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate submission for each country. Comments addressing SPS or standards-related measures should be submitted separately from comments on other trade barriers.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. Comments should be submitted under one of the following dockets (depending on the subject of the comment):

SPS Measures: USTR–2010–0020.

Standards-Related Measures: USTR–2010–0021.

All Other Measures: USTR–2010–0022.

To find these dockets, enter the pertinent docket number in the "Enter Keyword or ID" window at the www.regulations.gov home page and click "Search." The site will provide a search-results page listing all documents associated with that docket number. Find a reference to this notice by selecting "Notices" under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "Help" tab.)

The *www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, please identify the name of the country to which the submission pertains in the "Comments" field. For example: "See attached comment for (name of country)". If the comment is related to SPS or standards-related measures, type "See attached comment on SPS measures for (name of country)" or "See attached comment on standards-related measures for (name of country)". USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC". The top of any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL". Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. If a comment contains no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 2010–19447 Filed 8–5–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (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 the expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 12, 2010 (75 FR 26837–26838).

DATES: Comments must be submitted on or before [insert date 30 days after publication].

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th

Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Randolph Atkins, PhD, Office of Behavioral Safety Research, National Highway Traffic Safety Administration, NTI–131, Room W46–500, 1200 New Jersey Ave, SE., Washington, DC 20590. Dr. Atkins' phone number is 202–366–5597 and his e-mail address is *randolph.atkins@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Investigate the Use and Feasibility of Speed Warning Devices.

Type of Request: New information collection request—debriefing session follow-up with participants from an earlier on-road instrumented vehicle study.

Abstract: Speeding is one of the primary factors leading to vehicle crashes. In 2008, 31% of all fatal crashes were speeding-related. The estimated economic cost to society for speeding-related crashes is $40.4 billion per year. Driving at higher speeds reduces the ability of drivers to avoid obstacles or react to sudden changes in the roadway environment and increases the severity of crashes. Of particular concern are the habitual speeders and aggressive drivers for whom other countermeasures, such as enforcement, licenses suspensions, and fines, are not effective deterrents. The data collected in this study will provide NHTSA with important information on a countermeasure with the potential to address an especially challenging segment of the driving population that poses an inordinately high safety risk to themselves and other drivers who share the roads with them. In this pilot study, NHTSA will be conducting on-road instrumented vehicle data collection with drivers who have a history of speeding violations to examine the impact of in-vehicle speed warning devices on their driving speed patterns and speeding behavior. Participants will be asked to install a speed warning device for eight weeks. The device will provide data on travel speeds of participants' vehicles coupled with GPS information that is linked to a database with speed limits for various sections of roads in the study area. After completing their on-road phase of the data collection, participating drivers will be asked to participate in a short debriefing interview while the in-vehicle warning device is removed from their vehicle. The debriefing sessions will focus on the drivers' subjective experience regarding the speed warning device—how it affected their driving behavior, any problems experienced with the device, how they interacted with the device, and their opinion of the device, as well as feedback on their experience as a participant in the study. This subjective data will be coupled with the data from their actual driving behavior to help NHTSA develop a better understanding of speeding and speeders and the potential acceptance and effectiveness of using speed warning devices as a countermeasure to alter the speeding behavior of habitual speeders. The debriefing sessions are expected to provide data relevant to implementation issues and concerns associated with the device, as well as the key advantages and disadvantages associated with the use of this device as a countermeasure.

Affected Public: NHTSA plans to recruit 80 drivers from the Rockville, MD area, with a driving history of at least three speeding violations in the previous five years, through the MVA. The participants will be stratified; with 20 male and 20 female drivers age 18–29 and 20 male and 20 female drivers age 30 and above. Participation would be voluntary and confidential.

Estimated Total Annual Burden: The total estimated annual burden is 40 hours for the debriefing session (80×30 minutes per session) while the monitoring device is being removed from their vehicle. The participants would not incur any reporting cost from the information collection and will receive a $150 honorarium for data collection. The participants would not incur any record keeping burden or record keeping cost from the information collection.

Comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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 most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued on: August 3, 2010.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2010–19352 Filed 8–5–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35375]

CSX Transportation, Inc.—Corporate Family Merger Exemption—Gainesville Midland Railroad Company

CSX Transportation, Inc. (CSXT) and Gainesville Midland Railroad Company (GMRR) have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction. CSXT is a Class I rail carrier that directly controls and operates GMRR.[1] GMRR is a wholly owned subsidiary of CSXT. The transaction involves the merger of GMRR with and into CSXT with CSXT being the surviving corporation.

The transaction is scheduled to be consummated on or after August 20, 2010. The purpose of the transaction is to simplify the corporate structure and reduce overhead costs and duplication by eliminating one corporation while retaining the same assets to serve customers. CSXT will obtain certain other savings as a result of this transaction.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Railways.—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than August 13, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD No. 35375,

[1] *See CSX Corp.—Control—Chessie and Seaboard C. L. I., 363 I.C.C. 521 (1980)* and *Seaboard Air-Line R.R.—Control—Gainesville Midland R.R.,* FD 20296 (ICC decided Mar. 26, 1959), 307 I.C.C. 801, 803.

must be filed with the Surface Transportation Board, 395 E Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, Md. 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 29, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–19122 Filed 8–3–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35382]

Northern Plains Railroad, Inc.—Lease Exemption—Soo Line Railroad Company

Under 49 CFR 1011.7(b)(10), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption for lease transactions under 49 U.S.C. 10902. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 CFR 1011.2(a)(6). Accordingly, the Board revokes the delegation to the Director with respect to the issuance of this notice of exemption. The Board determines that this notice of lease and operation exemption should be issued, and does so here.

Northern Plains Railroad, Inc. (NPR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to renew its lease of approximately 290.31 miles of rail line of Soo Line Railroad Company, d/b/a Canadian Pacific Railway (Soo), in Minnesota and North Dakota (referred to as the Wheat Lines). NPR has operated the Wheat Lines pursuant to an existing lease with Soo since 1997.[1] According to NPR, NPR and Soo have entered into a Lease Renewal Agreement and a related Renewed Exchange and Operating Agreement, both dated July 19, 2010 (Agreements), which provide for NPR's continued lease of and provision of rail service on the Wheat Lines.[2] Pursuant to the Agreements, NPR will renew its lease of the Wheat Lines extending: (a) From milepost 309.69 at Thief River Falls, Minn., to milepost 474.5 at Bisbee; (b) from milepost 390.99 at Fordville, N.D., to milepost 445.50 at Devils Lake; and (c) from milepost 535.00 at Kramer, to milepost 605.99 at Kenmare, N.D. NPR states that, as part of the Agreements, NPR will lease 5 miles of abandoned Soo trackage at Kramer and 4.95 miles of abandoned Soo trackage at Bisbee for rail supply and other purposes.[3] The term of the lease renewal is 20 years. As required at 49 CFR 1150.43(h), NPR has disclosed that the Lease Renewal Agreement contains a provision that would limit NPR's future interchange of traffic with a third-party connecting carrier at any location. NPR notes that (other than with Soo) NPR has interchanges with BNSF Railway Company at Ardoch, N.D., Devils Lake, and Warren, Minn.

NPR states that it expects to remain a Class III rail carrier after consummation of the proposed transaction, and certifies that its projected annual revenues for the Wheat Lines as a result of the proposed transaction will not result in the creation of a Class II or Class I rail carrier. In accordance with the Board's requirements at 49 CFR 1150.42(e), NPR certified to the Board, on June 18, 2010, that it had posted the 60-day notice of the transaction at the workplaces of current NPR employees on the Wheat Lines on June 8 and 9, 2010, that it had posted the notice at the workplaces of Soo employees whose territory includes the Wheat Lines on June 17, 2010, and that it had served the notice on the national offices of the labor unions for such Soo employees on June 17, 2010. NPR stated that there are no labor unions that represent employees of NPR.

NPR states that it expects to consummate the transaction on September 1, 2010 (which is more than 60 days after NPR's certification to the Board that it had complied with the labor notice requirements at 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than August 13, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35382, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

1. The delegation of authority of the Office of Proceedings, under 49 CFR 1011.7(b)(10), to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

Decided: August 3, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham. Vice Chairman Mulvey dissented with a separate expression.

VICE CHAIRMAN MULVEY, dissenting:

I disagree with the Board's decision today to allow this transaction to be processed under the Board's class exemption procedures at 49 CFR 1150.41. I believe that transactions which prohibit the lessee carrier from interchanging with any rail carrier other than the lessor carrier should be subject to close scrutiny by the Board and that such scrutiny cannot take place within the expedited notice of exemption process.

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[1] NPR acquired authority to lease and operate approximately 377.55 miles of Soo rail line. *See Northern Plains R.R.—Lease and Operation Exemption—Certain Lines of Soo Line R.R.,* Docket No. FD 33324 (STB served Jan. 9, 1997). In 2009, NPR was authorized to discontinue service over certain lines covered by that lease: between Bisbee, N.D., and Kramer, N.D., and between Devils Lake, N.D., and Harlow, N.D. *See Northern Plains R.R.—Discontinuance of Serv. Exemption—in Ramsey and Benson Counties, N.D.,* Docket No. AB 1054X (STB served Dec. 28, 2009) (NPR discontinuance on Devils Lake-Harlow line); and *Northern Plains R.R.—Discontinuance of Serv. Exemption—in Bottineau, Rolette, and Towner Counties, N.D.,* Docket No. AB 1054 (Sub-No. 1X) (STB served Dec. 28, 2009) (NPR discontinuance on Bisbee-Kramer line). NPR states that it will renew its lease with Soo but that the lease will only cover approximately 290.31 miles now because Soo has abandoned the lines (described above) over which service had been discontinued. *See Soo Line R.R.—Aban. Exemption—in Ramsey and Benson Counties, N.D.,* Docket No. AB 57 (Sub-No. 54X) (STB served Oct. 22, 2004) (Soo abandonment of Devils Lake-Harlow line) and *Soo Line R.R.—Aban. Exemption—in Bottineau, Rolette, and Towner Counties, N.D.,* Docket No. AB 57 (Sub-No. 56X) (STB served Sept. 5, 2008) (Soo abandonment of Bisbee-Kramer line). NPR also notes a change to the Devils Lake endpoint, from milepost 446.0+/− to milepost 445.50.

[2] NPR's Agreements were filed under seal pursuant to 49 CFR 1150.43(h)(1)(ii). NPR states that the Lease Renewal Agreement includes other changes beyond the extension of the lease term. As a result, the class exemption at 49 CFR 1180.2(d)(4) covering lease renewals where only an extension of time is involved is not available here.

[3] NPR states that it does not seek any authority here to operate these previously abandoned segments.

Here, NPR seeks authorization for a lease from Soo of nearly 300 miles of rail line in Minnesota and North Dakota (the "Wheat Line"). NPR has leased this line since 1997 and now seeks a 20-year renewal. According to the notice (and further detailed in materials filed under seal), the prospective lease includes "a provision that would limit NPR's future interchange of Wheat Line traffic with a third-party connecting carrier at *any* location." *Notice of Exemption* at 4 (emphasis added).

I have indicated my view that interchange commitments should be subject to a searching review by the Board to determine whether they comport with the statute under which Board authorization is sought. *See, e.g., Washington & Idaho Ry.—Lease and Operation Exemption—BNSF Ry.,* FD 35370 (STB served Apr. 23, 2010) (Mulvey, commenting). When the Board adopted new disclosure rules regarding interchange commitments in 2008, we indicated that interchange commitments that contain a total ban on interchange with other carriers would be closely scrutinized. *Review of Rail Access and Competition Issues—Renewed Petition of the Western Coal Traffic League,* EP 575, slip op. at 15 (STB served Oct. 30, 2007); *Disclosure of Rail Interchange Commitments,* EP 575 (Sub-No. 1) (STB served May 29, 2008). To fulfill that commitment in this case, the Board should have required a full application (or individual petition for exemption), so that the Board could analyze the competitive impact of the interchange commitment. In certain cases, the Board has required more extensive procedures in transactions that otherwise qualify for the notice process but are deemed to be controversial or non-routine. *See, e.g., Northeast Interchange Ry.—Lease and Operation Exemption—Line in Croton-on-Hudson, NY,* FD 34734 (STB served Nov. 18, 2005). Our failure to do so here is disappointing, particularly given the length of the leased line, the length of the renewal period, and the fact that the 1997 Board decision authorizing the original lease did not analyze the interchange commitment. *See Northern Plains R.R.—Lease and Operation Exemption—Certain Lines of Soo Line R.R.,* FD 33324 (STB served Jan. 9, 1997).

It is time for the Board to build upon its interchange commitment disclosure rules by also disallowing utilization of the class notice of exemption procedure for transactions that prohibit interchange with third party carriers.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–19450 Filed 8–5–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

TIME AND DATE: August 12, 2010, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in this meeting by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: August 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–19590 Filed 8–4–10; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0071]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RAINDANCER.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0071 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 7, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0071. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel RAINDANCER is:

Intended Commercial Use of Vessel: "Chartered Trips for passengers."

Geographic Region: "California, Florida, Puerto Rico."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: August 2, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–19359 Filed 8–5–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0188]

Proposed Information Collection (Claim, Authorization and Invoice for Prosthetic Items and Services) Activity: Comment Request

Correction

In notice document 2010–18814 beginning on page 45206 in the issue of Monday, August 2, 2010, make the following correction:

On page 45206, in the second column, under the **DATES** heading, in the fifth and sixth lines, "September 1, 2010" should read "October 1, 2010".

[FR Doc. C1–2010–18814 Filed 8–5–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0697]

Proposed Information Collection (Application for Approval of a Licensing or Certification and Organization or Entity) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to approve licensing and certification tests for payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 5, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0697" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Approval of a Licensing or Certification and Organization Entity: 38 CFR 21.4268.

OMB Control Number: 2900–0697.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected will be used to determine whether licensing and certification tests, and the organizations offering them, should be approved for VA training under education programs VA administers.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,584 hours.

Frequency of Response: On occasion.

Estimated Average Burden per Respondents: 3 hours.

Estimated Annual Responses: 528.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–19402 Filed 8–5–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
August 6, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2010–11 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2010–0040; 91200–1231–9BPP–L2]

RIN 1018–AX06

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2010–11 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 16, 2010.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on docket number FWS–R9–MB–2010–0040.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2010–0040; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the May 13, 2010, **Federal Register** (75 FR 27144), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2010–11 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 29 Indian Tribes, based on the input we received in response to the May 13, 2010, proposed rule, and our previous rules. As described in that proposed rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal hunters on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal hunters, with hunting by nontribal hunters on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal hunters on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal hunters on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for tribal members on ceded lands. Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations, reviewed the current status of migratory bird hunting on Federal Indian reservations, and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal hunters on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We may modify regulations or establish experimental special hunts, after evaluation and confirmation of harvest information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, we made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 23–24, 2010, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2010–11 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl.

Participants at the previously announced July 28–29, 2010, meetings reviewed information on the current status of waterfowl and developed recommendations for the 2010–11 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings were open to public observation and you may submit comments to the Service as discussed in the **Public Comments** section below.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions during the 2010 Waterfowl Breeding Population and Habitat Survey were characterized by average to below-average moisture and a mild winter and early spring across the entire traditional (including the northern locations) and eastern survey areas. The total pond estimate (Prairie Canada and U.S. combined) was 6.7 ± 0.2 million. This was similar to the 2009 estimate and 34 percent above the long-term average of 5.0 ± 0.03 million ponds.

Traditional Survey Area (U.S. and Canadian Prairies and Parklands)

Conditions across the Canadian prairies were similar to 2009. Portions of southern Alberta, Saskatchewan, and Manitoba improved, but a large area along the Alberta and Saskatchewan border remained dry, and moisture levels in portions of Manitoba declined from last year. The 2010 estimate of ponds in Prairie Canada was 3.7 ± 0.2 million. This was similar to last year's estimate (3.6 ± 0.1 million) and to the 1955–2009 average (3.4 ± 0.03 million). Residual water remains in the Parklands and these were classified as fair to good. Most of the Prairie–Parkland region of Canada received abundant to historically high levels of precipitation during and after the survey, which, while possibly flooding some nests, will produce excellent brood-rearing habitat for successful nesters and lessen the summer drawdown, leading to beneficial wetland conditions next spring.

Wetland numbers and conditions remained fair to good in the eastern U.S. prairies, but habitat conditions declined through the western Dakotas and Montana. The 2010 pond estimate for the north-central United States was 2.9 ± 0.1 million, which was similar to last year's estimate (2.9 ± 0.1 million) and 87 percent above the long-term average (1.6 ± 0.02 million). Fall and winter precipitation in the eastern Dakotas generally improved good habitat conditions already present. However, wetlands in the western Dakotas and Montana were not recharged, resulting in a deterioration of conditions from 2009 at the time the survey was conducted.

Bush (Alaska, Northern Manitoba, Northern Saskatchewan, Northwest Territories, Yukon Territory, Western Ontario)

In the bush regions of the traditional survey area, spring breakup was early. Unlike in 2009, the majority of habitats were ice-free for arriving waterfowl. Habitat of most of the bush region, with the exception of Alaska and the Northwest Territories, was classified as fair due to below-average moisture, but the early spring should benefit waterfowl across the entire area.

Eastern Survey Area

The boreal forest and Canadian Maritimes of the eastern survey area experienced an early spring as well. Much of southern Quebec and Ontario were classified as poor to fair due to dry conditions, with the exception of an area of adequate moisture in west-central Ontario. More northern boreal forest locations benefited from near-normal precipitation and early ice-free conditions. Although winter precipitation from southwestern Ontario along the St. Lawrence River Valley and into Maine was below average, waterfowl habitat was classified as good to excellent, as in 2009. The James and Hudson Bay Lowlands of Ontario (strata 57–59) were not surveyed in 2010, but reports indicated an early spring in these locations as well.

Status of Teal

The estimate of blue-winged teal from the traditional survey area is 6.3 million. This represents a 14.0 percent decrease from 2009 and is 36 percent above the 1955–2009 average.

Sandhill Cranes

Compared to increases recorded in the 1970s, annual indices to abundance of the Mid-Continent Population (MCP) of sandhill cranes have been relatively stable since the early 1980s. The spring

2010 index for sandhill cranes in the Central Platte River Valley, Nebraska, uncorrected for visibility bias, was 451,024 birds. The photo-corrected, 3-year average for 2007–09 was 498,420, which is above the established population-objective range of 349,000–472,000 cranes.

All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2009–10. An estimated 7,394 hunters participated in these seasons, which was 23 percent lower than the number that participated in the previous season. Hunters harvested 15,282 MCP cranes in the U.S. portion of the Central Flyway during the 2009–10 seasons, which was 34 percent lower than the estimated harvest for the previous year but 6 percent higher than the long-term average. The retrieved harvest of MCP cranes in hunt areas outside of the Central Flyway (Arizona, Pacific Flyway portion of New Mexico, Alaska, Canada, and Mexico combined) was 7,304 during 2009–10. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 25,731 birds, which was a 39 percent decrease from the previous year's estimate. The long-term (1982–2008) trends for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2008 pre-migration survey for the Rocky Mountain Population (RMP) resulted in a count of 20,321 cranes. The 3-year average was 21,433 sandhill cranes, which is above the established population objective of 17,000–21,000 for the RMP. Hunting seasons during 2009–10 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming resulted in a record-high harvest of 1,392 RMP cranes, a 49 percent increase from the harvest of 936 in 2008–09.

The Lower Colorado River Valley Population (LCRVP) survey results indicate a slight decrease from 2,401 birds in 2008 to 2,264 birds in 2009. The 3-year average of 2,847 LCRVP cranes is based on counts from 2007, 2009, and 2010 (survey was not complete in 2008) and is above the population objective of 2,500.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2010 indicate that the number of singing male woodcock in the Eastern and Central Management Regions were unchanged from 2009. There was no significant 10-year trend in woodcock heard in the Eastern Management Region during 2000–10, which marks the seventh consecutive year that the 10-year trend estimate for the Eastern Region was stable. The 10-year trend in the Central Region indicated a statistically significant decline after being stable last year. There were long-term (1968–2010) declines of 1.0 percent per year in both management regions. Wing-collection Survey data indicate that the 2009 recruitment index for the U.S. portion of the Eastern Region (1.5 immatures per adult female) was 9 percent lower than the 2008 index, and 12 percent lower than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.2 immatures per adult female) was 20 percent lower than the 2008 index and 26 percent below the long-term average.

Band-Tailed Pigeons

Two subspecies of band-tailed pigeon occur north of Mexico and they are managed as two separate populations in the United States: the Interior Population and the Pacific Population. Information on the abundance and harvest of band-tailed pigeons is collected annually in the western United States and British Columbia. Abundance information comes from the Breeding Bird Survey (BBS) and, for the Pacific Population, the BBS and the Pacific Coast Mineral Site Survey. Annual counts of Interior band-tailed pigeons seen and heard per route declined since implementation of the BBS in 1966. Over the past 10 years indices have declined, but the evidence of a trend for this time period is weak. The 2009 harvest of Interior band-tailed pigeons was estimated to be 5,000 birds. BBS counts of Pacific Coast band-tailed pigeons seen and heard per route have also declined since 1966, as well as over the past 10 years; however, the credible interval for the more recent trend estimate includes zero. According to the Pacific Coast Mineral Site Survey, annual counts of Pacific Coast band-tailed pigeons seen at mineral sites have decreased since the survey became operational in 2004, but credible intervals include zero. The 2009 estimate of harvest for Pacific Coast band-tailed pigeons was 22,600 birds.

Mourning Doves

For the first time, in 2010, Mourning Dove Call-count Survey (CCS) data is being analyzed within a Bayesian hierarchical modeling framework, consistent with analysis methods for other long-term point count surveys such as the American Woodcock Singing-ground Survey and the North American Breeding Bird Survey. According to the analysis of the CCS, counts of mourning doves heard over the most recent 10 years (2001–10) increased in the Eastern Management Unit. There was no trend in mourning doves heard for the Central or Western Management Units. Over the 45-year period, 1966–2010, the number of mourning doves heard per route decreased in all three dove management units. The number of doves seen per route was also collected during the CCS. For the past 10 years, there was no trend in doves seen for the Central and Western Management Units; however, there is evidence of an increasing trend in the Eastern Management Unit. Over 45 years, there was no evidence of a trend in doves seen in the Central Management Unit; however a positive trend is indicated for the Eastern Management Unit and a declining trend is indicated for the Western Management Unit. The preliminary 2009 harvest estimate for the United States was 17,354,800 mourning doves.

White-Winged Doves

Two States harbor substantial populations of white-winged dove population: Arizona and Texas. California and New Mexico have much smaller populations. The Arizona Game and Fish Department has monitored white-winged dove populations by means of a CCS to provide an annual index to population size. It runs concurrently with the Service's Mourning Dove CCS. The index of mean number of white-winged doves heard per route from this survey peaked at 52.3 in 1968, but then declined until about 2000. The index has stabilized at around 25 doves per route in the last few years; in 2010, the mean number of doves heard per route was 23.6. Arizona Game and Fish also historically monitored white-wing dove harvest. Harvest of white-winged doves in Arizona peaked in the late 1960s at approximately 740,000 birds and has since declined and stabilized at around 100,000 birds; the preliminary 2009 Migratory Bird Harvest Information Program (HIP) estimate of harvest was 124,500 birds.

In Texas, white-winged doves continue to expand their breeding range. Nesting by white-wing doves has been recorded in most counties, except for the northeastern part of the State. Nesting is essentially confined to urban areas, but appears to be expanding to exurban areas. Concomitant with this range expansion has been a continuing increase in white-wing dove abundance. A new distance-based sampling protocol

was implemented for Central and South Texas in 2007, and has been expanded each year. In 2010, approximately 4,000 points were surveyed Statewide. Current year's survey data are being analyzed and abundance estimates will be available later this summer. The estimated harvest of white-wings in Texas in the 2008–2009 season was 1,259,300 birds. The Texas Parks and Wildlife Department continues to work to improve the scientific basis for management of white-winged doves.

In California, available BBS data indicate an increasing trend in the population indices between 1968 and 2009. According to HIP surveys, the preliminary harvest estimate for 2009 was 66,100 white-winged doves in California. In New Mexico, available BBS data also indicate an increasing trend over the long term. In 2009, the estimated New Mexico harvest was 64,500 white-winged doves.

White-Tipped Doves

White-tipped doves occur primarily south of the United States-Mexico border, however, the species does occur in Texas. Monitoring information is presently limited. White-tipped doves are believed to be maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. Distance-based sampling procedures implemented in Texas are also providing limited information on white-tipped dove abundance. Texas is working to improve the sampling frame to include the rural Rio Grande corridor in order to improve the utility of population indices. Annual estimates for white-tipped dove harvest in Texas averages between 3,000 and 4,000 birds.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2010–11 hunting season, we received requests from 24 Tribes and Indian organizations and propose seasons for 6 Tribes we usually hear from but have not yet received proposals. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 2010 **Federal Register** that will include tribal regulations for the early-hunting season. Early seasons generally begin around September 1 each year and most commonly include such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. Late seasons generally begin on or around September 24 and most commonly include waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as the same as permitted in Pacific Flyway States under final Federal frameworks, and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 29, 2010 (75 FR 44856); early-season final frameworks will be published in late August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 30 Tribes that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2010–11 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose that their early season begin September 1 and end September 15, 2010. Daily bag limits would be 10 mourning or white-winged doves in the aggregate. The late season for doves is proposed to open November 12, 2010, and close December 26, 2010. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit after the first day of the season. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would open October 9, 2010, and run until January 23, 2011. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, three scaup, one pintail, and two cinnamon teal. The season on canvasback is closed. The possession limit would be twice the daily bag limit after the first day of the season. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 16, 2010, through January 23, 2011. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six dark geese after opening day.

In 1996, the Tribes conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit and a Federal Migratory Bird Stamp in their possession while hunting. Other special tribally set regulations would apply. As in the past, the regulations would apply both to tribal and nontribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2010–11 hunting season, given the seasons dates fall within final flyway frameworks (applies to nontribal hunters only).

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating

under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal hunters would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For tribal members, the Tribe proposes outside frameworks for ducks and geese of September 1, 2010, through March 9, 2011. Daily bag and possession limits were not proposed for tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by nontribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2010–11 hunting season.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 26, 2010, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota and the Band's Reservation near Duluth.

The band's proposal for 2010–11 is essentially the same as that approved last year with separate regulations for the 1854 and 1837 ceded territories and reservation lands. The proposed 2010–11 waterfowl hunting season regulations for Fond du Lac are as follows:

Ducks

A. 1854 and 1837 Ceded Territories

Season Dates: Begin September 18 and end November 28, 2010.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 3 black ducks, 6 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

B. Reservation

Season Dates: Begin September 4 and end November 28, 2010.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 2 black duck, 4 scaup, 4 redhead, 2 pintail, 4 wood duck, and 2 canvasback.

Mergansers

A. 1854 and 1837 Ceded Territories

Season Dates: Begin September 18 and end November 28, 2010.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

B. Reservation

Season Dates: Begin September 4 and end November 28, 2010.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese: All Areas:

Season Dates: Begin September 1 and end November 28, 2010.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules)

A. 1854 and 1837 Ceded Territories

Season Dates: Begin September 18 and end November 28, 2010.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

B. Reservation

Season Dates: Begin September 4 and end November 28, 2010.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: All Areas:

Season Dates: Begin September 1 and end November 28, 2010.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: All Areas:

Season Dates: Begin September 1 and end November 28, 2010.

Daily Bag Limit: Eight common snipe.

Woodcock: All Areas:

Season Dates: Begin September 1 and end November 28, 2010.

Daily Bag Limit: Three woodcock.

Mourning Dove: All Areas

Season Dates: Begin September 1 and end October 30, 2010.

Daily Bag Limit: 30 mourning doves.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewa Indians.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2010–11 season, the Tribe requests that the tribal member duck season run from September 18, 2010, through January 18, 2011. A daily bag limit of 20 would include no more than 5 pintail, 3 canvasback, 1 hooded merganser, 5 black ducks, 5 wood ducks, 3 redheads, and 9 mallards (only 4 of which may be hens).

For Canada and snow geese, the Tribe proposes a September 1 through

November 30, 2010, and a January 1 through February 8, 2011, season. For white-fronted geese and brant, the Tribe proposes a September 20 through November 30, 2010, season. The daily bag limit for Canada and snow geese would be 10, and the daily bag limit for white-fronted geese including brant would be 5 birds. We further note that based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 through November 14, 2010, season. The daily bag limit will not exceed five birds. For mourning doves, snipe, and rails, the Tribe proposes a September 1 through November 14, 2010, season. The daily bag limit would be 10 per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2006–07 hunting season indicated that approximately 15 tribal hunters harvested an estimated 112 ducks and 50 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians requested 2010–11 special migratory bird hunting regulations.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission. (GLIFWC is an intertribal agency exercising delegated natural resource management and regulatory authority from its member Tribes in portions of Wisconsin, Michigan, and Minnesota.) Beginning in 1986, a Tribal season on ceded lands in the western portion of the Michigan Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources. We have approved regulations for Tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, GLIFWC requested, and we approved, regulations to permit Tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin originally concurred with the regulations, although both Wisconsin and Michigan have raised various concerns over the years. Minnesota did not concur with the original regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. In 1999, the U.S. Supreme Court upheld the existence of the tribes' treaty reserved rights in *Minnesota* v. *Mille Lacs Band,* 526 U.S. 172 (1999).

We acknowledge all of the States' concerns, but point out that the U.S. Government has recognized the Indian treaty reserved rights, and that acceptable hunting regulations have been successfully implemented in Minnesota, Michigan, and Wisconsin. Consequently, in view of the above, we have approved regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of treaty reserved rights for band members to hunt and fish was pivotal in our decision to approve a season in 1991–92 for the 1836 ceded area in Michigan. Since then, in the 2007 Consent Decree the 1836 Treaty Tribes' and Michigan Department of Natural Resources and Environment established court approved regulations pertaining to off-reservation hunting rights for migratory birds.

For 2010, the GLIFWC proposed off-reservation special migratory bird hunting regulations on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member Tribes of the Task Force are: the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians in Minnesota; the Lac Vieux Desert Band of Chippewa Indians, and the Keweenaw Bay Indian Community in Michigan.

The GLIFWC 2010 proposal is generally similar to last year's regulations.

Harvest surveys conducted after the 1996, 1997, 1998, 2001, 2004, 2007, and 2008 tribal seasons indicate that tribal off-reservation harvest has averaged approximately 1,050 ducks and 200 geese annually during this period. The Tribe expects harvest would likely remain below 2,000 ducks and 500 geese, which is similar to anticipated levels in previous years. Due to the limited distribution of doves and dove habitat in the ceded territory, and the relatively small number of tribal off-reservation migratory bird hunters, dove harvest is negligible.

The proposed 2010–11 waterfowl hunting season regulations apply to all treaty areas (accept where noted) for GLIFWC are as follows:

Ducks

Season Dates: Begin September 15 and end December 31, 2010.

Daily Bag Limit: 30 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

Mergansers: All Ceded Areas:

Season Dates: Begin September 15 and end December 31, 2010.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2010. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 31, 2010.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 31, 2010.

Daily Bag Limit: 20, singly or in the aggregate.

C. Common Snipe

Season Dates: Begin September 15 and end December 31, 2010.

Daily Bag Limit: 16 common snipe.

D. Woodcock

Season Dates: Begin September 7 and end December 1, 2010.

Daily Bag Limit: 10 woodcock.

E. Mourning Dove

1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end November 9, 2010.

Daily Bag Limit: 15 mourning doves.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. *Particular regulations of note include:*

1. Nontoxic shot will be required for all waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective section 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for nontribal members as published at 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective section 10.05(2)(b) of the model ceded territory conservation codes will be removed.

6. Hunting hours shall be from a half hour before sunrise to 15 minutes after sunset.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We propose to approve the GLIFWC regulations for the 2010–11 hunting season.

(f) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2010–11 waterfowl and Canada goose season beginning October 9, 2010, and a closing date of November 30, 2010. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a daily bag limit for Canada geese of two. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2009–10 season, estimated duck harvest was 438, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised less than one percent of the total harvest in 2009. The estimated harvest of geese was 12 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2010–11 waterfowl harvest would be around 500 ducks and 25–30 geese.

We propose to approve the Tribe's requested 2010–11 hunting seasons.

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit and 800 acres of reservation land with a guide for waterfowl hunting. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2010–11 migratory bird hunting seasons, the Kalispel Tribe proposed tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal hunters on reservation, the Tribe requests the seasons open at the earliest possible date and remain open, for the maximum amount of open days. Specifically, the Tribe requests that the season for ducks begin September 18, 2010, and end January 31, 2011. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 1 to September 13, 2010, and from October 2, 2010, to January 31, 2011. Total number of days should not exceed 107. Nontribal hunters should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2007–08 nontribal harvest of 80 ducks. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel Tribe proposes season dates consistent with Federal flyway frameworks. Specifically, the Tribe requests outside frameworks for ducks of October 1, 2010, through January 31, 2011, and for geese of September 1, 2010, through January 31, 2011. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. During that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no tribal harvest. Under the proposal, the Tribe expects harvest to be less than 200 birds for the season with less than 100 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe, provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway.

(h) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamath Tribe. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2010–11 season, the Tribe requests proposed season dates of October 1, 2010, through January 31, 2011. Daily bag limits would be 9 for ducks, 9 for geese, and 25 for coot, with possession limits twice the daily bag limit. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested 2010–11 special migratory bird hunting regulations.

(i) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2010–11 season, the Tribe requests a duck season starting on September 18 and ending December 31, 2010, and a goose season to run from September 1 through December 31, 2010. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 500–1,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's special migratory bird hunting season.

(j) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties. The Band proposes the following regulations to govern the hunting of migratory birds by Tribal members within the 1836 Ceded Territory as well as on the Band's Reservation.

For the 2010–11 season, we assume the Little River Band of Ottawa Indians would propose a duck and merganser season from September 15, 2010, through January 20, 2011. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black duck, 3 wood ducks, 3 redheads, 6 mallards (only 2 of which may be a hen), and 1 hooded merganser. Possession limits would be twice the daily bag limit.

For white-fronted geese, snow geese, and brant, the Tribe usually proposes a September 20 through November 30, 2010, season. Daily bag limits would be five geese.

For Canada geese only, the Tribe usually proposes a September 1, 2010, through February 8, 2011, season with a daily bag limit of five Canada geese. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, the Tribe usually proposes a September 1 to November 14, 2010, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitored harvest through mail surveys. General conditions were as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2010–11 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. *Particular regulations of note include:*

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We plan to approve Little River Band of Ottawa Indians' special migratory bird hunting seasons upon receipt of their proposal based on the provisions described above.

(k) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2010–11 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to those of other Tribes in the 1836 treaty area. The tribal member duck and merganser season would run from September 15, 2010, through January 31, 2011. A daily bag limit of 20 would include no more than 5 pintail, 5 canvasback, 5 scaup, 5 hooded merganser, 5 black ducks, 5 wood ducks, and 5 redheads.

For Canada geese, the Tribe proposes a September 1, 2010, through February 8, 2011, season. The daily bag limit for Canada geese would be 20 birds. We further note that based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 5, 2010, to December 1, 2010,

season. The daily bag limit will not exceed 10 birds. For snipe, the Tribe proposes a September 15 to December 31, 2010, season. The daily bag limit will not exceed 16 birds. For mourning doves, the Tribe proposes a September 1 to November 9, 2010, season. The daily bag limit will not exceed 15 birds. For Virginia and sora rails, the Tribe proposes a September 1 to December 31, 2010, season. The daily bag limit will not exceed 20 birds per species. For coots and gallinules, the Tribe proposes a September 1 to December 31, 2010, season. The daily bag limit will not exceed 20 birds per species. The possession limit will not exceed 2 days' bag limit for all birds.

All other Federal regulations contained in 50 CFR part 20 would apply.

The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2010–11 special migratory bird hunting regulations.

(l) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers-taken lands. For the 2010–11 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and nontribal hunters.

For the 2010–11 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, or the maximum number of days allowed by Federal frameworks in the High Plains Management Unit for this season.

The Tribe proposes a season from October 9, 2010, through January 13, 2011. The daily bag limit would be six birds, including no more than one hen mallard, one pintail, two redheads, one canvasback, two wood ducks, two scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed nontribal member Canada goose season would run from October 30, 2010, through February 13, 2011 (107-day season length), with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 30, 2010, through January 7, 2011, and January 29 through February 13, 2011, with a daily bag limit of one white-fronted geese. The Tribe's proposed nontribal member light goose season would run from October 30, 2010, through January 10, 2011, and February 5 through March 10, 2011. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from September 11, 2010, through March 10, 2011. The daily bag limit would be six birds, including no more than one hen mallard, one pintail, two redheads, one canvasback, two wood ducks, two scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could be hooded mergansers. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed Canada goose season for tribal members would run from October 2, 2010, through March 10, 2011, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose tribal season would run from October 2, 2010, through March 10, 2011, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose tribal season would run from October 2, 2010, through March 10, 2011. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2009–10 season, hunters harvested an estimated 500 geese and 541 ducks. In the 2009–10 season, duck harvest species composition was primarily mallard (87 percent), gadwall (8 percent), green-winged teal (3 percent), and blue-winged teal, pintail, and redheads (2 percent).

Goose harvest species composition in 2009–10 at Mni Sho Sho was approximately 87 percent Canada geese, 13 percent snow geese, and 0 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 85 percent Canada geese and 14 percent snow geese.

The Tribe anticipates a duck harvest similar to those of the previous 3 years and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of nontoxic shot, Migratory Waterfowl Hunting and Conservation Stamps, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We plan to approve the Tribe's requested regulations for the Lower Brule Reservation given the seasons dates fall within final Federal flyway frameworks (applies to nontribal hunters only).

(m) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for tribal members for the 2010–11 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

For the 2010–11 season, the Lower Elwha Klallam Tribe requests a duck and coot season from September 18, 2010, to December 31, 2010. The daily bag limit will be seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck will be one per season. The coot daily bag limit will be 25. The possession limit will be twice the daily bag limit, except as noted above.

For geese, the Tribe requests a season from September 18, 2010, to December 31, 2010. The daily bag limit will be four, including no more than three light geese. The season on Aleutian Canada geese will be closed.

For brant, the Tribe proposes to close the season.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a

season from September 18, 2010, to December 31, 2010, with a daily bag limit of 10, 2, and 8, respectively. The possession limit will be twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe typically anticipates harvest to be fewer than 50 birds. Tribal reservation police and Tribal Fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

The Service proposes to approve the request for special migratory bird hunting regulations for the Lower Elwha Klallam Tribe.

(n) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 25, 2010, to January 30, 2011. The daily bag limit is seven ducks, including no more than five mallards (only two hen mallard), one canvasback, one pintail, three scaup, and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

For geese, the Tribe proposes the season open on September 25, 2010, and close January 30, 2011. The daily bag limit for geese is four and one brant. The Tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese.

For band-tailed pigeons, the Tribe proposes the season open September 18, 2010, and close October 31, 2010. The daily bag limit for band-tailed pigeons is two.

The Tribe usually anticipates that harvest under this regulation will be relatively low since there are no known dedicated waterfowl hunters and any harvest of waterfowl or band-tailed pigeons is usually incidental to hunting for other species, such as deer, elk, and bear. The Tribe expects fewer than 50 ducks and 10 geese to be harvested during the 2010–11 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also usually proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area;

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl;

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation;

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited;

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; and

(6) The use of dogs is permitted to hunt waterfowl.

We plan to approve the Makah Indian Tribe's requested 2010–11 special migratory bird hunting regulations, upon receipt of their proposal based on the provisions described above.

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

For the 2010–11 season, the Navajo Nation requests special migratory bird hunting regulations on the reservation for both tribal and nontribal hunters for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, the Tribe requests the earliest opening dates and longest seasons, and the same daily bag and possession limits allowed to Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through September 30, 2010, with daily bag limits of 10 and 5, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), which must be signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe anticipates a total harvest of fewer than 500 mourning doves; fewer than 10 band-tailed pigeons; fewer than 1,000 ducks, coots, and mergansers; and fewer than 1,000 Canada geese for the 2010–11 season. The Tribe will measure harvest by mail survey forms. Through the established Navajo Nation Code, Title 17, 18, and 23 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's special migratory bird season.

(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and nontribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced the Tribe's hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a May 28, 2010, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general outside dates as being September 18 through December 5, 2010, with a closed segment of November 20 to 28, 2010. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood duck, one redhead, two pintail, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2010, with a daily bag limit of three Canada geese. Hunters will be issued

three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. The Tribe will close the season November 20 to 28, 2010. If a quota of 300 geese is attained before the season concludes, the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 4 and November 7, 2010, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 7, 2010, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(q) Point No Point Treaty Council Tribes, Kingston, Washington (Tribal Members Only)

We are establishing uniform migratory bird hunting regulations for tribal members on behalf of the Point No Point Treaty Council Tribes, consisting of the Port Gamble S'Klallam and Jamestown S'Klallam Tribes. The two tribes have reservations and ceded areas in northwestern Washington State and are the successors to the signatories of the Treaty of Point No Point of 1855. These proposed regulations will apply to tribal members both on and off reservations within the Point No Point Treaty Areas; however, the Port Gamble S'Klallam and Jamestown S'Klallam Tribal season dates differ only where indicated below.

For the 2010–11 season, the Point No Point Treaty Council requests special migratory bird hunting regulations for the 2010–11 hunting season for a duck and coot hunting season from September 1, 2010, to February 1, 2011. The daily bag limit is seven ducks, including no more than two hen mallards, one canvasback, one pintail, two redhead, and four scoters. The daily bag limit for coots is 25. The daily bag limit and possession limit on harlequin ducks is one per season. The daily possession limits are double the daily bag limits except where noted.

For geese, the Point No Point Treaty Council proposes the season open on September 15, 2010, and close March 10, 2011. The daily bag limit for geese is four, not to include more than three light geese. The Council notes that there is a year-round closure on Aleutian and Cackling Canada geese. For brant, the Jamestown S'Klallam Tribe proposes the season open on January 15, 2011, and close January 31, 2011. The Port Gamble S'Klallam Tribe proposes the brant season open November 13, 2010, and close January 31, 2011. The daily bag limit for brant is two.

For band-tailed pigeons and snipe, the Port Gamble S'Klallam Tribe proposes the season open September 1, 2010, and close March 10, 2011. The Jamestown S'Klallam Tribe proposes the season open September 15, 2010, and close March 10, 2011. The daily bag limit for band-tailed pigeons is two and for snipe is eight. For mourning dove, the Port Gamble S'Klallam Tribe proposes the season open September 1, 2010, and close January 31, 2011. The Jamestown S'Klallam Tribe proposes the season open September 15, 2010, and close January 14, 2011. The daily bag limit for mourning dove is 10.

The Tribe anticipates a total harvest of fewer than 200 birds for the 2010–11 season. The Tribal Fish and Wildlife enforcement officers have the authority to enforce these tribal regulations.

We propose to approve the Point No Point Treaty Council Tribes special migratory bird seasons.

(r) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only)

The Sault Ste. Marie Tribe of Chippewa Indians is a federally recognized self-governing Indian Tribe, distributed throughout the eastern Upper Peninsula and northern Lower Peninsula of Michigan. The Tribe has retained the right to hunt, fish, trap, and gather on the lands ceded in Treaty of Washington (1836).

In a May 29, 2010, letter, the Tribe proposed special migratory bird hunting regulations. For mourning dove, the Tribe proposes a season between September 1 and November 14, 2010, with a daily bag and possession limit of 10 and 20, respectively. For all other migratory game birds in which the Tribe authorizes harvest, the Tribe proposes that the seasons and daily bag limits will be within the limits of the season dates and harvest limits approved for the State of Michigan.

All Sault Tribe members exercising hunting treaty rights within the 1836 Ceded Territory are required to submit annual harvest reports including date of harvest, number and species harvested, and location of harvest. Hunting hours would be from one-half hour before sunrise to 15 minutes after sunset. Only non-toxic shot are allowed for hunting waterfowl.

We propose to approve the request for special migratory bird hunting regulations for the Sault Ste. Marie Tribe of Chippewa Indians.

(s) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they would provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2010–11 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2010–11 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season, with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States under the final Federal frameworks. The Tribes propose a duck and coot season with, if the same number of hunting days is permitted as last year, an opening date of October 2, 2010, and a closing date of January 16, 2011. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is

permitted as in previous years, the season would have an opening date of October 2, 2010, and a closing date of January 16, 2011. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 2, 2010, and a closing date of January 16, 2011.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year, and we propose they be approved for the 2010–11 hunting season given the seasons dates fall within the final Federal flyway frameworks (applies to nontribal hunters only).

(t) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which the Skokomish Tribe was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes have been acting independently since 2005, and the Skokomish Tribe would like to establish migratory bird hunting regulations for tribal members for the 2010–11 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe requests a duck and coot season from September 16, 2010, to February 28, 2011. The daily bag limit is seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 16, 2010, to February 28, 2011. The daily bag limit is four, including no more than three light geese. The season on Aleutian Canada geese is closed. For brant, the Tribe proposes a season from November 1, 2010, to February 15, 2011, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 16, 2010, to February 28, 2011, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be fewer than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's requested migratory bird hunting season.

(u) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only)

The Spokane Tribe of Indians wishes to establish waterfowl seasons on their respective reservation for its membership to access to an additional resource. An established waterfowl season on the reservation will allow access to a resource for members to continue practicing a subsistence lifestyle.

The Spokane Indian Reservation is located in northeastern Washington State. The reservation comprises approximately 157,000 acres. The boundaries of the Reservation are the Columbia River to the west, the Spokane River to the south (now Lake Roosevelt), Tshimikn Creek to the east, and the 48th Parallel as the north boundary. Tribal membership comprises approximately 2,300 enrolled Spokane Tribal Members. Prior to 1939, the Spokane Tribe was primarily a salmon people; upon completion of Grand Coulee Dam creating Lake Roosevelt, the development of hydroelectricity without passage ultimately removed salmon access from historical fishing areas for the Spokane Tribe for the past 70 years.

These proposed regulations would allow Tribal Members, spouses of Spokane Tribal Members, and first-generation descendants of a Spokane Tribal Member with a tribal permit and Federal Waterfowl stamp an opportunity to utilize the reservation and ceded lands. It will also benefit tribal membership through access to this resource throughout Spokane Tribal ceded lands in eastern Washington. By Spokane Tribal Referendum, spouses of Spokane Tribal Members and children of Spokane Tribal Members not enrolled are allowed to harvest game animals within the Spokane Indian Reservation with the issuance of hunting permits.

For the 2010–11 season, the Tribe requests to establish duck seasons that would run from September 2, 2010, through January 31, 2011. The tribe is requesting the daily bag limit for ducks to be consistent with the State of Washington. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 1, 2010, and ending on January 31, 2011. The tribe is requesting the daily bag limit for geese to be consistent with the State of Washington. The possession limit is twice the daily bag limit.

Based on the quantity of requests the Spokane Tribe of Indians has received, the tribe anticipates harvest levels for the 2010–11 season for both ducks and geese to be below 300 total birds with goose harvest at fewer than 100. Hunter success will be monitored through mandatory harvest reports returned within 30 days of the season closure.

We propose to approve the Spokane Tribe's requested 2010–11 special migratory bird hunting regulations.

(v) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 2010–11 season, the Tribe usually requests to establish duck and coot seasons that would run from September 1, 2010, through January 15, 2011. The daily bag limit for ducks is five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots, the daily bag limit is 25. For snipe, the Tribe usually proposes the season start on September 15, 2010, and end on January 15, 2011. The daily bag limit for snipe is eight. For band-tailed pigeon, the Tribe usually proposes the season start on September 1, 2010, and end on December 31, 2010. The daily bag limit is five. The possession limit is twice the daily bag limit.

The Tribe usually proposes a season on geese starting September 15, 2010, and ending on January 15, 2011. The

daily bag limit for geese is four, including no more than two snow geese. The season on Aleutian and Cackling Canada geese is closed. For brant, the Tribe usually proposes the season start on September 1, 2010, and end on December 31, 2010. The daily bag limit for brant is two. The possession limit is twice the daily bag limit.

Upon receipt of the 2010–11 Squaxin Island Tribe's hunting proposal, we propose to approve the Tribe's requested 2010–11 special migratory bird hunting regulations.

(w) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, and Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes that duck (including mergansers) and goose seasons run from October 1, 2010, to February 15, 2011. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. For geese, the daily bag limit is six. Possession limits are totals of these two daily bag limits.

The Tribe proposes that coot, brant, and snipe seasons run from October 1, 2010, to January 31, 2011. The daily bag limit for coot is 25. The daily bag limit on brant is three. The daily bag limit for snipe is 10. Possession limits are twice the daily bag limit.

The Tribe proposes that band-tailed pigeon and dove seasons run from September 1, 2010, to October 31, 2010. The daily bag limit for band-tailed pigeon is four. The daily bag limit on dove is 10. Possession limits are twice the daily bag limit.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(x) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian Tribe consisting of the Swinomish, Lower Skagit, Samish, and Kikialous. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2010–11 season, the Tribal Community usually requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribal Community usually requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish Indian Tribal Community requests an additional three birds of each species over that allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community usually proposes a hunting season for the abovementioned species beginning on the earliest possible opening date and closing March 9, 2011. The Swinomish manage harvest by a report card and permit system, and we anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. Upon receipt of the 2010–11 Swinomish hunting proposal, we propose to approve the Tribe's requested 2010–11 special migratory bird hunting regulations.

(y) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

For the 2010–11 season, the Tribe proposes tribal and nontribal hunting regulations for the 2010–11 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members would be from September 8, 2010, through February 28, 2011. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under the final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. For coot, daily bag and possession limits are 25 and 50, respectively, and for snipe 8 and 18, respectively. Nontribal hunters should check with the Tulalip tribal authorities regarding additional conservation measures that may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members propose a season from September 8, 2010, through February 28, 2011. Nontribal hunters would be allowed the longest season and the latest closing date permitted by the Pacific Flyway Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate stamps by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters of fewer than 1,000 ducks and 500 geese annually.

We propose approval of the Tulalip Tribe's request to have a special season.

(z) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. The Tribe issues tribal hunters a harvest report card that will be shared with the State of Washington.

For the 2010–11 season, the Tribe requests a duck season starting October 1, 2010, and ending February 28, 2011. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The Tribe requests a coot season starting October 15, 2010, and ending February 15, 2011. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from October 15, 2010, to February 28, 2011, with a daily bag limit of seven geese and two brant. The possession limit for geese and brant are 10 and 2, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2010, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and tribal harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe.

(aa) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2010–11 season, the Tribe usually proposes a duck season of October 29, 2010, through February 25, 2011. The Tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, six drake mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintail, and four of all other species not listed. The season for harlequin ducks would be closed. The Tribe usually proposes a teal (green-winged and blue) season of October 13, 2010, through January 26, 2011. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe usually proposes a season between October 12, 2010, and February 28, 2011, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For Canada geese, the Tribe usually requests a season between September 14 to September 28, 2010, and October 29, 2010, through February 25, 2011, with a daily bag limit of five Canada geese during the first period, and three Canada geese during the second period. For snow geese, the tribe usually requests a season between September 8 to September 22, 2010, and October 29, 2010, to February 25, 2011, with a daily bag limit of 15 snow geese.

For woodcock, the Tribe usually proposes a season between October 13 and November 28, 2010, with a daily bag limit of three.

Prior to 2010, the Tribe had 22 registered tribal hunters, and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. The Tribe requires hunters to register with the Harvest Information Program.

Upon receipt of the 2010–11 hunting proposal, we propose to approve the Wampanoag Tribe of Gay Head's requested 2010–11 special migratory bird hunting regulations.

(bb) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2010–11 migratory bird hunting season, the White Earth Band of Ojibwe requests a duck season to start September 18 and end December 12, 2010. For ducks, they request a daily bag limit of 10, including no more than 2 mallards, 1 pintail, and 1 canvasback. For mergansers, the Tribe proposes the season to start September 18 and end December 19, 2010. The merganser daily bag limit would be five with no more than two hooded mergansers. For geese, the Tribe proposes an early season from September 1 through September 26, 2010, and a late season from September 27, 2010, through December 19, 2010. The early season daily bag limit is eight geese and the late season daily bag limit is five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe proposes a September 1 through November 30, 2010, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe's request to have a special season upon receipt of the 2010–11 proposal.

(cc) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: The length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2010–11 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2010–11 season.

For nontribal and tribal hunters, the Tribe usually proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 10, 2010, and a closing date of January 24, 2011. The Tribe usually proposes a separate scaup season, with an opening date of October 10, 2010, and a closing date of December 6, 2010. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, one pintail, and seven mallards (including no more than two hen mallards). The season on canvasback is closed. The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the Tribe usually proposes a season from October 10, 2010, through January 31, 2011. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would usually run concurrently from September 1 through September 15, 2010, in Wildlife Management Unit 10 and all areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

Upon receipt of the 2010–11 hunting proposal, we propose to approve the White Mountain Apache Tribe's requested 2010–11 special migratory bird hunting regulations.

(dd) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

The Yankton Sioux Tribe has yet to submit a waterfowl hunting proposal for the 2010–11 season. The Yankton Sioux tribal waterfowl hunting season usually would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe usually proposes a season starting October 9, 2010, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be six ducks, which may include no more than five mallards (no more than two hens), one canvasback (when open), two redheads, three scaup, one pintail, or two wood ducks. The bag limit for mergansers is five, which would include no more than one hooded merganser. The coot daily bag limit is 15.

For geese, the Tribe usually requests a dark goose (Canada geese, brant, white-fronted geese) season starting October 29, 2010, and closing January 31, 2011. The daily bag limit would be three geese (including no more than one white-fronted goose or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 29, 2010, and run for the maximum amount of days allowed under the final Federal frameworks for the State of South Dakota. Daily bag and possession limits would equal the maximum allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2005–06 hunting season, the Tribe reported that 90 nontribal hunters took 400 Canada geese, 75 light geese, and 90 ducks. Forty-five tribal members harvested fewer than 50 geese and 50 ducks.

We plan to approve the Yankton Sioux 2010–11 hunting seasons upon receipt of their proposal based on the provisions described above.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule,

will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available by either contacting the person indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Before issuance of the 2010–11 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. At this time, we are proposing no changes to the season frameworks for the 2010–11 season, and as such, we will again consider these three alternatives. However, final frameworks will depend on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov.*

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008.

Copies of the Analysis are available upon request from the Division of Migratory Bird Management (*see* **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov.*

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we

do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are used in formulating migratory game bird hunting regulations. OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013).

A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. We solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season in the May 13, **Federal Register**. The resulting proposals are contained in this proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*). We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2010, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal hunters may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules, woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, mergansers, and geese.

The rules that eventually will be promulgated for the 2010–11 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: July 29, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–19433 Filed 8–5–10; 8:45 am]

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H.R. 4861/P.L. 111–217
To designate the facility of the United States Postal Service located at 1343 West Irving Park Road in Chicago, Illinois, as the ''Steve Goodman Post Office Building''. (Aug. 3, 2010; 124 Stat. 2369)

H.R. 5051/P.L. 111–218
To designate the facility of the United States Postal Service located at 23 Genesee Street in Hornell, New York, as the ''Zachary Smith Post Office Building''. (Aug. 3, 2010; 124 Stat. 2370)

H.R. 5099/P.L. 111–219

To designate the facility of the United States Postal Service located at 15 South Main Street in Sharon, Massachusetts, as the ''Michael C. Rothberg Post Office''. (Aug. 3, 2010; 124 Stat. 2371)

S. 1789/P.L. 111–220

Fair Sentencing Act of 2010 (Aug. 3, 2010; 124 Stat. 2372)

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