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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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, January 25, 2011
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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Reader Aids
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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 75, No. 249
Wednesday, December 29, 2010

Presidential Documents

Title 3—

The President

Executive Order 13561 of December 22, 2010

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* Pursuant to the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (H.R. 3082), which I signed into law today (the "Continuing Appropriations Act"), the rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)) are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), and section 140 of Public Law 97–92) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, the Non-Foreign Area Retirement Equity Assurance Act of 2009 (Public Law 111–84; 5 U.S.C. 5304 note), and the Continuing Appropriations Act, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2011. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2011.

Sec. 8. *Prior Order Superseded.* Executive Order 13525 of December 23, 2009, is superseded.

THE WHITE HOUSE,
December 22, 2010.

Billing code 3195–W1–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

	1	2	3	4	5	6	7	8	9	10
GS-1	$17,803	$18,398	$18,990	$19,579	$20,171	$20,519	$21,104	$21,694	$21,717	$22,269
GS-2	20,017	20,493	21,155	21,717	21,961	22,607	23,253	23,899	24,545	25,191
GS-3	21,840	22,568	23,296	24,024	24,752	25,480	26,208	26,936	27,664	28,392
GS-4	24,518	25,335	26,152	26,969	27,786	28,603	29,420	30,237	31,054	31,871
GS-5	27,431	28,345	29,259	30,173	31,087	32,001	32,915	33,829	34,743	35,657
GS-6	30,577	31,596	32,615	33,634	34,653	35,672	36,691	37,710	38,729	39,748
GS-7	33,979	35,112	36,245	37,378	38,511	39,644	40,777	41,910	43,043	44,176
GS-8	37,631	38,885	40,139	41,393	42,647	43,901	45,155	46,409	47,663	48,917
GS-9	41,563	42,948	44,333	45,718	47,103	48,488	49,873	51,258	52,643	54,028
GS-10	45,771	47,297	48,823	50,349	51,875	53,401	54,927	56,453	57,979	59,505
GS-11	50,287	51,963	53,639	55,315	56,991	58,667	60,343	62,019	63,695	65,371
GS-12	60,274	62,283	64,292	66,301	68,310	70,319	72,328	74,337	76,346	78,355
GS-13	71,674	74,063	76,452	78,841	81,230	83,619	86,008	88,397	90,786	93,175
GS-14	84,697	87,520	90,343	93,166	95,989	98,812	101,635	104,458	107,281	110,104
GS-15	99,628	102,949	106,270	109,591	112,912	116,233	119,554	122,875	126,196	129,517

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$99,628	$80,728	$65,413	$53,003	$42,948	$38,394	$34,324	$30,684	$27,431
2	102,617	83,150	67,375	54,593	44,236	39,546	35,354	31,605	28,254
3	105,695	85,644	69,397	56,231	45,564	40,732	36,414	32,553	29,102
4	108,866	88,214	71,479	57,918	46,930	41,954	37,507	33,529	29,975
5	112,132	90,860	73,623	59,655	48,338	43,213	38,632	34,535	30,874
6	115,496	93,586	75,832	61,445	49,789	44,509	39,791	35,571	31,800
7	118,961	96,393	78,107	63,288	51,282	45,844	40,985	36,638	32,754
8	122,530	99,285	80,450	65,187	52,821	47,220	42,214	37,737	33,737
9	126,206	102,264	82,863	67,143	54,405	48,636	43,481	38,870	34,749
10	129,517	105,332	85,349	69,157	56,037	50,095	44,785	40,036	35,791
11	129,517	108,492	87,910	71,232	57,719	51,598	46,129	41,237	36,865
12	129,517	111,746	90,547	73,369	59,450	53,146	47,512	42,474	37,971
13	129,517	115,099	93,263	75,570	61,234	54,741	48,938	43,748	39,110
14	129,517	118,552	96,061	77,837	63,071	56,383	50,406	45,060	40,283

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Assistant Under Secretaries for Health (Only applies to incumbents who are not physicians or dentists)	$157,279**

	Minimum	Maximum
Service Directors	$116,844	$145,113
Director, National Center for Preventive Health	99,628	145,113

Physician and Dentist Base and Longevity Schedule***

Physician Grade	$97,987	$143,725
Dentist Grade	97,987	143,725

Clinical Podiatrist, Chiropractor, and Optometrist Schedule

Chief Grade	$99,628	$129,517
Senior Grade	84,697	110,104
Intermediate Grade	71,674	93,175
Full Grade	60,274	78,355
Associate Grade	50,287	65,371

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$99,628	$129,517
Assistant Director Grade	84,697	110,104
Chief Grade	71,674	93,175
Senior Grade	60,274	78,355
Intermediate Grade	50,287	65,371
Full Grade	41,563	54,028
Associate Grade	35,766	46,494
Junior Grade	30,577	39,748

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* This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $145,700.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$119,554	$179,700
Agencies without a Certified SES Performance Appraisal System	$119,554	$165,300

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

Level I	$199,700
Level II	179,700
Level III	165,300
Level IV	155,500
Level V	145,700

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

Vice President	$230,700
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

Chief Justice of the United States	$223,500
Associate Justices of the Supreme Court	213,900
Circuit Judges	184,500
District Judges	174,000
Judges of the Court of International Trade	174,000

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2011)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10**	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$9,530.70	$9,842.70	$10,050.00	$10,107.90	$10,366.50	$10,798.20	$10,899.00	$11,308.80	$11,426.40	$11,779.80	$12,291.00
O-7	7,919.10	8,287.20	8,457.30	8,592.60	8,837.70	9,079.80	9,359.70	9,638.70	9,918.60	10,798.20	11,540.70
O-6	5,869.50	6,448.50	6,871.50	6,871.50	6,897.60	7,193.40	7,232.40	7,232.40	7,643.40	8,370.30	8,796.90
O-5	4,893.00	5,512.20	5,893.80	5,965.80	6,203.70	6,346.20	6,659.40	6,889.20	7,186.20	7,640.70	7,856.70
O-4	4,221.90	4,887.30	5,213.40	5,286.00	5,588.70	5,913.30	6,317.40	6,632.10	6,851.10	6,976.50	7,049.10
O-3***	3,711.90	4,208.10	4,542.00	4,951.80	5,188.80	5,449.20	5,617.80	5,894.70	6,039.00	6,039.00	6,039.00
O-2***	3,207.30	3,652.80	4,207.20	4,349.10	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50
O-1***	2,784.00	2,897.40	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$4,951.80	$5,188.80	$5,449.20	$5,617.80	$5,894.70	$6,128.10	$6,262.20	$6,444.90
O-2E	-	-	-	4,349.10	4,438.50	4,580.10	4,818.60	5,002.80	5,140.20	5,140.20	5,140.20
O-1E	-	-	-	3,502.50	3,740.40	3,878.70	4,020.30	4,158.90	4,349.10	4,349.10	4,349.10
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$3,836.10	$4,126.50	$4,245.00	$4,361.40	$4,562.10	$4,760.70	$4,961.40	$5,264.40	$5,529.60	$5,781.90	$5,988.30
W-3	3,502.80	3,648.90	3,798.60	3,847.80	4,004.70	4,313.70	4,635.00	4,786.20	4,961.10	5,142.00	5,466.00
W-2	3,099.90	3,393.00	3,483.30	3,545.40	3,746.40	4,059.00	4,213.50	4,366.20	4,552.50	4,698.00	4,830.00
W-1	2,721.00	3,013.50	3,092.40	3,258.90	3,456.00	3,745.80	3,881.40	4,070.40	4,256.70	4,403.10	4,538.10

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $20,263.50 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2011)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10**	$15,400.80*	$15,475.80*	$15,797.70*	$16,358.40*	$16,358.40*	$17,176.20*	$17,176.20*	$18,034.80*	$18,034.80*	$18,936.90*	$18,936.90*
O-9	13,469.70	13,663.80	13,944.00	14,433.00	14,433.00	$15,155.10*	15,155.10*	15,912.90*	15,912.90*	16,708.50*	16,708.50*
O-8	12,762.30	13,077.30	13,077.30	13,077.30	13,077.30	13,404.30	13,404.30	13,739.40	13,739.40	13,739.40	13,739.40
O-7	11,540.70	11,540.70	11,540.70	11,599.50	11,599.50	11,831.70	11,831.70	11,831.70	11,831.70	11,831.70	11,831.70
O-6	9,222.90	9,465.60	9,711.30	10,187.70	10,187.70	10,391.10	10,391.10	10,391.10	10,391.10	10,391.10	10,391.10
O-5	8,070.30	8,313.30	8,313.30	8,313.30	8,313.30	8,313.30	8,313.30	8,313.30	8,313.30	8,313.30	8,313.30
O-4	7,049.10	7,049.10	7,049.10	7,049.10	7,049.10	7,049.10	7,049.10	7,049.10	7,049.10	7,049.10	7,049.10
O-3***	6,039.00	6,039.00	6,039.00	6,039.00	6,039.00	6,039.00	6,039.00	6,039.00	6,039.00	6,039.00	6,039.00
O-2***	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50	4,438.50
O-1***	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50	3,502.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$6,444.90	$6,444.90	$6,444.90	$6,444.90	$6,444.90	$6,444.90	$6,444.90	$6,444.90	$6,444.90	$6,444.90	$6,444.90
O-2E	5,140.20	5,140.20	5,140.20	5,140.20	5,140.20	5,140.20	5,140.20	5,140.20	5,140.20	5,140.20	5,140.20
O-1E	4,349.10	4,349.10	4,349.10	4,349.10	4,349.10	4,349.10	4,349.10	4,349.10	4,349.10	4,349.10	4,349.10
WARRANT OFFICERS											
W-5	$6,820.80	$7,167.00	$7,424.70	$7,710.00	$7,710.00	$8,095.80	$8,095.80	$8,500.50	$8,500.50	$8,925.90	$8,925.90
W-4	6,189.60	6,485.40	6,728.40	7,005.60	7,005.60	7,145.70	7,145.70	7,145.70	7,145.70	7,145.70	7,145.70
W-3	5,685.30	5,816.40	5,955.60	6,144.90	6,144.90	6,144.90	6,144.90	6,144.90	6,144.90	6,144.90	6,144.90
W-2	4,987.80	5,091.60	5,174.10	5,174.10	5,174.10	5,174.10	5,174.10	5,174.10	5,174.10	5,174.10	5,174.10
W-1	4,701.60	4,701.60	4,701.60	4,701.60	4,701.60	4,701.60	4,701.60	4,701.60	4,701.60	4,701.60	4,701.60

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $20,263.50 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2011)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$4,634.70	$4,739.70	$4,872.00	$5,027.70	$5,184.60
E-8	-	-	-	-	-	$3,794.10	3,961.80	4,065.60	4,190.40	4,325.10	4,568.40
E-7	$2,637.30	$2,878.50	$2,988.90	$3,135.00	$3,249.00	3,444.60	3,554.70	3,750.90	3,913.50	4,024.50	4,143.00
E-6	2,281.20	2,510.10	2,620.80	2,728.50	2,840.70	3,093.60	3,192.30	3,382.80	3,441.00	3,483.60	3,533.40
E-5	2,090.10	2,230.20	2,337.90	2,448.30	2,620.20	2,800.50	2,947.50	2,965.50	2,965.50	2,965.50	2,965.50
E-4	1,916.10	2,014.20	2,123.40	2,230.80	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90
E-3	1,729.80	1,838.70	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00
E-2	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90
E-1**	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60
E-1***	1,357.20	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,489.80 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2011)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					ENLISTED MEMBERS						
E-9*	$5,436.60	$5,649.30	$5,873.40	$6,215.70	$6,215.70	$6,526.20	$6,526.20	$6,852.90	$6,852.90	$7,195.80	$7,195.80
E-8	4,691.70	4,901.70	5,017.80	5,304.60	5,304.60	5,411.10	5,411.10	5,411.10	5,411.10	5,411.10	5,411.10
E-7	4,189.20	4,342.80	4,425.60	4,740.00	4,740.00	4,740.00	4,740.00	4,740.00	4,740.00	4,740.00	4,740.00
E-6	3,533.40	3,533.40	3,533.40	3,533.40	3,533.40	3,533.40	3,533.40	3,533.40	3,533.40	3,533.40	3,533.40
E-5	2,965.50	2,965.50	2,965.50	2,965.50	2,965.50	2,965.50	2,965.50	2,965.50	2,965.50	2,965.50	2,965.50
E-4	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90	2,325.90
E-3	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00	1,950.00
E-2	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90	1,644.90
E-1**	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60	1,467.60
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,489.80 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $974.40.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

Locality Pay Area*	Rate
Alaska**	24.69%
Atlanta-Sandy Springs-Gainesville, GA-AL	19.29%
Boston-Worcester-Manchester, MA-NH-RI-ME	24.80%
Buffalo-Niagara-Cattaraugus, NY	16.98%
Chicago-Naperville-Michigan City, IL-IN-WI	25.10%
Cincinnati-Middletown-Wilmington, OH-KY-IN	18.55%
Cleveland-Akron-Elyria, OH	18.68%
Columbus-Marion-Chillicothe, OH	17.16%
Dallas-Fort Worth, TX	20.67%
Dayton-Springfield-Greenville, OH	16.24%
Denver-Aurora-Boulder, CO	22.52%
Detroit-Warren-Flint, MI	24.09%
Hartford-West Hartford-Willimantic, CT-MA	25.82%
Hawaii**	16.51%
Houston-Baytown-Huntsville, TX	28.71%
Huntsville-Decatur, AL	16.02%
Indianapolis-Anderson-Columbus, IN	14.68%
Los Angeles-Long Beach-Riverside, CA	27.16%
Miami-Fort Lauderdale-Pompano Beach, FL	20.79%
Milwaukee-Racine-Waukesha, WI	18.10%
Minneapolis-St. Paul-St. Cloud, MN-WI	20.96%
New York-Newark-Bridgeport, NY-NJ-CT-PA	28.72%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD	21.79%
Phoenix-Mesa-Scottsdale, AZ	16.76%
Pittsburgh-New Castle, PA	16.37%
Portland-Vancouver-Beaverton, OR-WA	20.35%
Raleigh-Durham-Cary, NC	17.64%
Richmond, VA	16.47%
Sacramento—Arden-Arcade—Yuba City, CA-NV	22.20%
San Diego-Carlsbad-San Marcos, CA	24.19%
San Jose-San Francisco-Oakland, CA	35.15%
Seattle-Tacoma-Olympia, WA	21.81%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA	24.22%
Rest of U.S**	14.16%

* Locality Pay Areas are defined in 5 CFR 531.603

** Under the Non-Foreign Area Retirement Equity Assurance Act of 2009 (sections 1911-1919, Public Law 111-84, October 28, 2009), two-thirds of the applicable locality pay rate will be payable in non-foreign areas effective with the first pay period in January 2011. Those two-thirds payable locality rates are 16.46% in Alaska, 11.01% in Hawaii, and 9.44% in other non-foreign areas (as identified in 5 CFR 591.205(b)(3)-(16)) that are part of the Rest of U.S. locality pay area.

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

AL-3/A	$103,900
AL-3/B	111,800
AL-3/C	119,900
AL-3/D	127,800
AL-3/E	135,900
AL-3/F	143,700
AL-2	151,800
AL-1	155,500

[FR Doc. 2010–32960
Filed 12–28–10; 8:45 am]
Billing code 6325–01–C

Presidential Documents

Memorandum of December 22, 2010

Memorandum for the Heads of Executive Departments and Agencies

Freezing Federal Employee Pay Schedules and Rates That Are Set By Administrative Discretion

On November 29, 2010, I proposed a two-year freeze in the pay of civilian Federal employees as the first of a number of difficult actions required to put our Nation on a sound fiscal footing. As I said then, Federal workers are not just a line in a budget. They are public servants who, like their private sector counterparts, may be struggling in these difficult economic times.

Despite the sacrifices that I knew a pay freeze would entail for our dedicated civil servants, I concluded that a two-year freeze in the upward statutory adjustment of pay schedules is a necessary first step in our effort to address the challenge of our fiscal reality. The Congress responded to my proposal by including such a freeze in the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (H.R. 3082), which I signed into law today (the "Act"). The Act freezes statutory pay adjustments for all executive branch pay schedules for a two-year period. It also generally prohibits executive departments and agencies from providing any base salary increases at all to senior executives or senior level employees, including performance-based increases.

While this legislation will prevent adjustments in executive branch pay schedules that are made by statute, some laws allow such adjustments to be made by agency heads as an exercise of administrative discretion. In order to ensure consistent treatment of executive branch employees and to promote the fiscal purposes of my original proposal, agency heads who have such discretion should not provide any upward adjustments in Federal employees' pay schedules or rates during the two-year period covered by the statutory pay freeze.

Accordingly, you should suspend any increases to any pay systems or pay schedules covering executive branch employees that could otherwise take effect as a result of an exercise of administrative discretion during the period beginning on January 1, 2011, and ending on December 31, 2012. You also should forgo any general increases (including general increases for a geographic area, such as locality pay) in covered employees' rates of pay that could otherwise take effect as a result of the exercise of administrative discretion during the same period. To the extent that an agency pay system provides performance-based increases in lieu of general increases, funds allocated for those performance-based increases should be correspondingly reduced to reflect the freezing of the employees' base pay schedule.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. 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 Personnel Management shall issue guidance on implementing this memorandum, and is also hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, December 22, 2010

[FR Doc. 2010–32961
Filed 12–28–10; 8:45 am]
Billing code 6325–01–P

Rules and Regulations

Federal Register
Vol. 75, No. 249
Wednesday, December 29, 2010

DEPARTMENT OF AGRICULTURE

7 CFR Part 2

Delegations of Authority

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1 to 26, revised as of Jan. 1, 2010, on page 139, in § 2.16, paragraph (L) which follows paragraph (xv) is moved to follow paragraph (K) on page 138.

[FR Doc. 2010–32952 Filed 12–28–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 274

RIN 0584–AD48

Supplemental Nutrition Assistance Program, Regulation Restructuring: Issuance Regulation Update and Reorganization To Reflect the End of Coupon Issuance Systems

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Affirmation of direct final rule as final rule.

SUMMARY: The Food and Nutrition Service (FNS) is adopting as a final rule, without change, a direct final rule that made changes to the Supplemental Nutrition Assistance Program (SNAP) regulations to account for the replacement of the paper coupon issuance system with the Electronic Benefits Transfer (EBT) system as the nationwide method of distributing benefits to program participants. This action is in accordance with the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (the 2008 Farm Bill) which prohibited State agencies from issuing paper food stamp coupons and made EBT cards the sole method of benefit delivery. The 2008 Farm Bill also de-obligated paper coupons as legal tender as of June 18, 2009. Therefore, paper coupons no longer have any value and can no longer be redeemed at any store.

In line with EBT implementation and the elimination of coupons, these changes remove coupon issuance and EBT pilot regulations that are no longer applicable, revise regulatory language to more appropriately reflect the new EBT issuance system and the Program's new name, and reorganize sections to develop a more cohesive set of issuance regulations.

DATES: Effective December 29, 2010, the Food and Nutrition Service adopted as a final rule the direct final rule published at 75 FR 18377 on April 12, 2010. The effective date of that direct final rule was June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Andrea Gold, Chief, Retailer Management and Issuance Branch, Benefit Redemption Division (703) 305–2456.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2010, the Food and Nutrition Service (FNS) published a direct final rule entitled, Supplemental Nutrition Assistance Program, Regulation Restructuring: Issuance Regulation Update and Reorganization To Reflect the End of Coupon Issuance Systems, that made changes to the SNAP regulations to account for the replacement of the paper coupon issuance system with the EBT system as the nationwide method of distributing benefits to program recipients. FNS published a direct final rule to expedite implementation of the rule's provision, while allowing public input. Comments were invited on the rule and the comment period ended on May 12, 2010.

FNS received one comment in response to the direct Final Rule that misinterpreted the intent of the rule. The comment addressed the new citation at 7 CFR 274.6(a)(3)(i) regarding replacement issuances for food lost in a household misfortune. The commenter believed that the regulation was changed to only allow benefits used for food purchased 10 days prior to the misfortune to be replaced. To the contrary, the new language merely removed obsolete coupon and authorization document references and now reads, "the report will be considered timely if it is made to the State agency within 10 days of the date food purchased with Program benefits is destroyed in a household misfortune." The focus of this statement is on when households must *report* the food loss, not on the date the food was purchased. Therefore, as required by the previous language, households must report the food loss within 10 days after the date the food was destroyed. The food must be food that was purchased with SNAP benefits. The date when the food was actually purchased has no bearing on the amount of the issuance replacement.

The Department's Office of the General Counsel reviewed the comment and clarification and determined that because the comment was based on a misreading of the language, it would not have to be considered a material comment that would prevent FNS from adopting the direct final rule as a final rule.

List of Subjects in 7 CFR Part 274

SNAP, Grant programs-social programs, Reporting and recordkeeping requirements.

Supplemental Nutrition Assistance Program, Regulation Restructuring: Issuance Regulation Update and Reorganization to Reflect the End of Coupon Issuance Systems

■ Accordingly, FNS is adopting as a final rule, without change, the direct final rule that amended 7 CFR part 274 and was published at 75 FR 18377 on April 12, 2010.

Dated: November 24, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–32686 Filed 12–28–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0004]

Asian Longhorned Beetle; Quarantined Area and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by adding a portion of Worcester County, MA, to the list of quarantined areas and restricting the interstate movement of regulated articles from that area. The interim rule also updated the list of regulated articles in order to reflect new information concerning host plants. The interim rule was necessary to prevent the artificial spread of Asian longhorned beetle to noninfested areas of the United States. As a result of the interim rule, the interstate movement of regulated articles from the quarantined area is restricted.

DATES: Effective on December 29, 2010, we are adopting as a final rule the interim rule published at 75 FR 34320–34322 on June 17, 2010.

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

SUPPLEMENTARY INFORMATION:

Background

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

In an interim rule [1] effective and published in the **Federal Register** on June 17, 2010 (75 FR 34320–34322, Docket No. APHIS–2010–0004), we amended the Asian longhorned beetle regulations in 7 CFR part 301 by adding a portion of Worcester County, MA, to the list of quarantined areas, restricting the interstate movement of regulated articles from that area, and updating the list of regulated articles to include the Katsura tree (*Cercidiphyllum* spp).

Comments on the interim rule were required to be received on or before August 16, 2010. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 75 FR 34320–34322 on June 17, 2010.

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0004.*

Done in Washington, DC on December 22, 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–32768 Filed 12–28–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 400 to 699, revised as of Jan. 1, 2010, on page 565, in § 652.2, the first definition for "Technical service" is removed.

[FR Doc. 2010–32945 Filed 12–28–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 707

RIN 0560–AH91

Prevention of Payments to Deceased Persons

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to clarify the regulations governing payments earned by persons who die, disappear, or are declared incompetent before the payment is made. The payments must have been timely requested by that person themselves or by an authorized representative. These amendments are intended to clarify payment provisions and to prevent incorrect payments, particularly with respect to instances where persons have died. Payment eligibility where the payment was earned by persons who have since died is the subject of a specific 2008 Farm Bill requirement addressed in this rule.

DATES: *Effective Date:* December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Candace Thompson, Director, Production, Emergencies and Compliance Division, FSA, US Department of Agriculture (USDA), Mail Stop 0517, 1400 Independence Avenue,

SW., Washington, DC 20250–0517; *telephone:* (202) 720–3463; *electronic mail: Candy.Thompson@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Current FSA regulations in 7 CFR part 707 govern certain farm related payments earned by persons who have died, disappeared, or been declared incompetent before the payment was made. Section 1611 of the 2008 Farm Bill (Pub. L. 110–246, 7 U.S.C. 8786) requires, with respect to persons who have died, that FSA clarify these regulations to describe the circumstances in which such payments will be made. This rule, however, addresses all three subjects covered in the part 707 regulations (death, disappearance, and a finding of incompetency). The 2008 Farm Bill also requires the Secretary of Agriculture to reconcile data with the Social Security Administration (SSA) to determine if persons receiving payments are alive. As discussed below, by the time the 2008 Farm Bill was enacted, FSA had implemented that required data reconciliation process and other procedures intended to address previous Government Accountability Office (GAO) concerns with payments on behalf of deceased persons.

This rule adds a new paragraph to § 707.3 to specify payment eligibility for estates and surviving family members of deceased persons. The new paragraph makes explicit that payment will not be made on behalf of a deceased person unless the payment was earned by that person before the person died and was requested by the person themselves or their authorized representative before they died or after their death by a person authorized by law, independent of these FSA regulations, to act for that person. The rules in part 707 specify to whom the payment will be made if there is a proper application, but that issue is separate from the question of whether the payment has been properly applied for by the deceased or someone authorized by law to act for the deceased before or after the death. Payment must have been requested before the person died or requested after the death by someone authorized by law (independently of the part 707 regulations) to act for the deceased.

Assuming a proper application for payment has been made, § 707.3 specifies the order of precedence for potential payees, which includes executors and surviving family members. That order is not changed in this rule. Again, that order of precedence applies only if there was a proper application for payment by someone authorized to act for the deceased (including the deceased prior to the death). For example, if a husband individually earned a disaster payment and applied for the payment before his death but the payment had not yet been made when the death occurred, there are some instances under § 707.3 in which the deceased's spouse could receive the payment under the terms of that section even though the spouse did not have the power under local law to act for the deceased. On the other hand, if the deceased had not applied for the payment, though had otherwise earned the payment, and there was no one legally authorized to act for the deceased, the payment rules of § 707.3 would not apply. They would only apply if someone could act for the deceased and then filed the application, at which point the payment rules of § 707.3 would apply. In this manner, the question of who can file the application and who can receive the payment can be two separate issues. One of those issues (the issue of who is legally authorized to act for the deceased) may have to be resolved independently of part 707. This is clarified in this rule for all matters covered in that part. Those three matters are death, disappearance, and a finding of incompetency. These amendments all clarify rather than change current FSA practice.

Also, because of changes in the 2008 Farm Bill on payment limitations, the term "person" is now taken to mean only individuals, as opposed to "entities," and payments are attributed to individuals through corporations. The regulations in this rule only provide the clarifications noted above. The regulations in this rule do not cover the attribution of payments for payment limitation purposes. The amount of an actual payment eligibility would be covered by the regulations that cover the specific program in which the payment was earned and the general payment limitation regulations found in 7 CFR part 1400.

Section 1611 of the 2008 Farm Bill, the authority for this rule concerning prevention of improper payments to the deceased, uses the term "individual." To be consistent with the payment limitation and attribution rules in 7 CFR part 1400 and with the existing 7 CFR part 707, and to provide needed clarity on payment eligibility, this rule uses the term "person" to mean an "individual."

Additional Information on Data Reconciliation Procedures

In addition to the specific amendments made in the rule, FSA has strengthened and will continue to strengthen data reconciliation procedures to ensure that payments made on behalf of deceased persons are not disbursed incorrectly. The rest of this preamble to the rule describes those activities and provides some background on why and how they were implemented.

The issuance of payments to deceased individuals was the subject of a 2007 GAO audit. In July 2007, the GAO released an audit report entitled "USDA Needs to Strengthen Controls to Prevent Improper Payments to Estates and Deceased Individuals" (GAO–07–818). Before the 2008 Farm Bill was enacted, FSA had already taken action to address the GAO audit. FSA started a data-matching process that compares program payment information to the SSA Death Master File (DMF), beginning with program payments issued in fiscal year (FY) 2007. In addition, FSA has strengthened documentation procedures at the State and local levels for outstanding payments earned by estates of deceased persons, to address GAO's concern that FSA was not following its own procedures requiring such documentation for payment to estates open more than two years after the date of death of the deceased person.

Review of the data-match report and of information on file in FSA offices revealed 121,527 payments in FY 2007 totaling $108 million were disbursed on behalf of persons identified as deceased prior to the date payment was made. The data reconciliation review showed that relatively few payments made on behalf of deceased persons (less than two percent of the total dollar value of such payments) had any indication of circumstances that warranted further review to ensure a greater certainty of the accuracy of the payments. While no instances of deliberate fraud were found, the rules in our handbooks are being clarified with respect to the question of the limited circumstances in which payments may appropriately be made to estates and to surviving relatives of deceased persons. Related changes are being made in part 707 with respect to payments earned by persons who have disappeared or have been declared incompetent.

Further review of payments "flagged" during the review found that most of these payments were in fact correct in amount and appropriately directed. The review revealed that not all persons

identified as dead were in fact deceased, and that where an entity that included a deceased shareholder received a payment, the total payment made to the entity was in most cases correct and appropriately made. In cases where the entity had failed to notify FSA in a timely fashion that a person or entity member had died, the payment to the entity was nearly always correct and the same amount as if the current entity member information had been timely received. Since many small entities are well below the payment limits specified in 7 CFR part 1400 for one person, the death of a person with an interest in an entity does not necessarily reduce the payment to such entity even if that death would otherwise reduce the overall number of potential payment eligibilities for the entity such as a general partnership. Where the data reconciliation review revealed erroneous payments for FY 2007, FSA immediately started collection procedures. To reduce the number of questionable payments going forward, FSA now provides county offices with a list of persons who have been identified as deceased as a result of the data reconciliation process.

The data reconciliation review found many cases in which FSA had appropriately made payments on behalf of deceased persons, but where the source of potential concern about the appropriateness of the payment was that the amount of time between the death and the payment was more than a year. For example, most of the FY 2007 payments made on behalf of deceased persons were for the Direct and Counter-cyclical Program, where counter-cyclical payments may be disbursed 18 months after the final enrollment period for the applicable year, so a person could have earned payments more than a year before the payments were issued for that crop. For disaster program benefits, the payment could be several years after the loss. In many cases, the program benefits had been requested by the person before the date of the person's death. In this rule, the regulations are made more explicit to specify that even if the payment was not requested before the death, the payment may still be applied for by a person authorized by law to act for the deceased. If a proper application is filed, then the payment rules of § 707.3 apply. As a practical matter, this means that if the deceased did not file an application before the time of death, the payment will likely go to the executor or administrator of the estate of the deceased for the benefit of the estate. Presumably the administrator or executor would be the only party authorized to act for the deceased. Section 707.3 provides that if there is an executor or administrator, then the payment will go to the estate. Payment to family members would only occur under § 707.3 if the payment was applied for prior to the death of the individual involved. The data reconciliation process also found that some payments that appeared to have been made to deceased persons were instead appropriately made to estates using the Social Security numbers of the deceased, or to trusts using Social Security numbers.

A few payments were found to be erroneous, and FSA took action to collect refunds of those payments. The causes of erroneous payments did not appear to be fraud, because while FSA did not have the correct or current information to determine payment eligibility, it did not appear that someone had deliberately provided FSA with information they knew was false. For example, the causes of erroneous or improper payments made on behalf of deceased persons for FY 2007 included the following:

- A person who had power of attorney for another person did not realize that person had died before the crop year for which the program payment applied, and that therefore the deceased person was not eligible for payment.

- FSA was not timely informed of a person's death, the formation of an estate for the deceased, or the settlement of an estate. The executor was not aware that FSA should have been notified, or the farm manager was not aware or informed of the death of an interest holder of the entity.

FSA has made the data reconciliation process and use of the SSA's DMF a part of its standard procedure for verifying payment eligibility. This is a change from previous procedures that depended on producers and their representatives to report producer deaths to FSA. For FY 2008 and subsequent years, quarterly reports of persons who have been identified as deceased based on the data reconciliation process have been made available to all FSA State and county offices. FSA offices are required to conduct additional data review and verification for such persons before issuing any payment, and must document in writing why the person, their estate, or their authorized representative is eligible for payment. These documentation procedures are specified in our updated handbooks.

Notice and Comment

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

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, OMB reviewed this final rule. A cost benefit assessment of this rule is summarized below and is available from the contact listed above.

Cost Benefit Analysis

FSA analyzed payment records for FY 2007; as a result FSA categorized approximately $2 million in FY 2007 payments issued to the deceased as payments that were "issued in error," but that were legitimate payments that would have been made correctly if paperwork had been updated. The "issued in error" categorization includes the instances where FSA was not informed of the original direct or indirect payment recipient's death. The FY 2007 analysis found no instances of use of identification numbers of deceased farmers to collect payments fraudulently, though the possibility remains that analysis of later years' results as they become available might uncover some such instances. These initial results suggest that FSA's institution of ongoing cross referencing of SSA data on the deceased and FSA payment records may result in some monetary recoveries for the Government, perhaps on the order of $1 million annually or less. The annual cost of acquiring SSA data on the deceased is just $6,000, but the cost of the time field staff dedicated to analyzing the reports could offset any amounts recovered. The largest benefit from the procedures clarified in this regulation will be FSA's enhanced ability to ensure that payments are being distributed in accordance with all laws and regulations.

Regulatory Flexibility Act

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

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The changes in this rule to the eligibility requirements for deceased producers, required by the 2008 Farm Bill, that are identified in this final rule, are solely administrative. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

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

Executive Order 12988

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

Executive Order 13132

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

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." This Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law. This rule was included in the October through December, 2010, Joint Regional Consultation Strategy facilitated by USDA that consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA sent senior level agency staff to seven regional locations and consulted with Tribal leadership in each region on the rules. When the consultation process is complete, USDA will analyze the feedback and then incorporate any required changes into the regulations.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and Tribal governments or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act

In general, any rule designated by OMB under Executive Order 12866 as economically significant is also a major rule. As noted above, OMB designated this rule as significant, but not economically significant. As a result, this rule is not considered a major rule under SBREFA. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review and this rule is effective on the date of publication in the **Federal Register**.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 707

Agriculture, Grant programs—agriculture, Loan programs—agriculture, Price support programs.

■ For the reasons discussed above, this rule amends 7 CFR part 707 as follows:

PART 707—PAYMENTS DUE PERSONS WHO HAVE DIED, DISAPPEARED, OR HAVE BEEN DECLARED INCOMPETENT

■ 1. Revise the authority citation for part 707 to read as follows:

Authority: 7 U.S.C. 1385 and 8786.

■ 2. Amend § 707.3 by revising paragraph (a) introductory text, to read as set forth below:

§ 707.3 Death.

(a) Where any person who would otherwise be eligible to receive a payment dies before the payment is received, payment may be released in accordance with this section so long as, and only if, a timely program application has been filed by the deceased before the death or filed in a timely way before or after the death by a person legally authorized to act for the deceased. Timeliness will be determined under the relevant program regulations. All program conditions for payment under the relevant program regulations must have been met for the deceased to be considered otherwise eligible for the payment. However, the payment will not be made under this section unless, in addition, a separate release application is filed in accordance with § 707.7. If these conditions are met, payment may be released without regard to the claims of creditors other than the United States, in accordance with the following order of precedence:

* * * * *

■ 3. Amend § 707.4 by revising paragraph (a) introductory text, to read as set forth below:

§ 707.4 Disappearance.

(a) Where any person who would otherwise be eligible to receive a payment disappears before the payment is received, payment may be released in accordance with this section so long as, and only if, a timely program application has been filed by that person before the disappearance or filed timely before or after the disappearance by someone legally authorized to act for the person involved. Timeliness will be determined under the relevant program regulations. All program conditions for payment under the relevant program regulations must have been met for the person involved to be considered otherwise eligible for the payment. However, the payment will not be made unless, in addition, a separate release application is filed in accordance with § 707.7. If these conditions are met, payment may be released without regard to the claims of creditors other than the

United States, in accordance with the following order of precedence:

* * * * *

■ 4. Revise § 707.5 to read as set forth below:

§ 707.5 Incompetency.

(a) Where any person who would otherwise be eligible to receive a payment is adjudged incompetent by a court of competent jurisdiction before the payment is received, payment may be released in accordance with this section so long as, and only if, a timely and binding program application has been filed by the person involved while capable or by someone legally authorized to file an application for the person involved. Timeliness is determined under the relevant program regulations. In all cases, the payment application must have been timely under the relevant program regulations and all program conditions for payment must have been met by or on behalf of the person involved. However, the payment will not be made unless, in addition, a separate release application is filed in accordance with § 707.7. If these conditions are met, payment may be released without regard to the claims of creditors other than the United States, to the guardian or committee legally appointed for the person involved. In case no guardian or committee had been appointed, payment, if for not more than $1,000, may be released without regard to claims of creditors other than the United States, to one of the following in the following order for the benefit of the person who was the subject of the adjudication:

(1) The spouse.

(2) An adult son, daughter, or grandchild.

(3) The mother or father.

(4) An adult brother or sister.

(5) Such person as may be authorized under State law to receive payment for the person (see standard procedure prescribed for the respective region).

(b) In case payment is more than $1,000, payment may be released only to such person as may be authorized under State law to receive payment for the incompetent, so long as all conditions for other payments specified in paragraph (a) of this section and elsewhere in the applicable regulations have been met. Those requirements include the filing of a proper and timely and legally authorized program application by or for the person adjudged incompetent. The release of funds under this paragraph will be made without regard to claims of creditors other than the United States unless the agency determines otherwise.

§ 707.6 [Amended]

■ 5. Amend § 707.6 by removing the words "apply for a payment" and adding, in their place, the words "apply for a release of a payment".

■ 6. Amend § 707.7 as follows:

■ a. Revise the heading to read as set forth below, and

■ b. Remove the first sentence and add in its place the seven sentences set forth below.

§ 707.7 Release application.

No payment may be made under this part unless a proper program application was filed in accordance with the rules for the program that generated the payment. That application must have been timely and filed by someone legally authorized to act for the deceased, disappeared, or declared-incompetent person. The filer can be the party that earned the payment themselves—such as the case of a person who filed a program application before they died—or someone legally authorized to act for the party that earned the payment. All program conditions for payment must have been met before the death, disappearance, or incompetency except for the timely filing of the application for payment by the person legally authorized to act for the party earning the payment. But, further, for the payment to be released under the rules of this part, a second application must be filed. That second application is a release application filed under this section. In particular, as to the latter, where all other conditions have been met, persons desiring to claim payment for themselves or an estate in accordance with this part 707 must do so by filing a release application on Form FSA–325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent." * * *

Signed in Washington, DC, on December 22, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–32760 Filed 12–28–10; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1366]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for public comment.

SUMMARY: The Board is publishing for comment an interim rule amending Regulation Z, which implements the Truth in Lending Act (TILA). This interim rule revises the Board's interim rule published on September 24, 2010, which implemented certain requirements of the Mortgage Disclosure Improvement Act of 2008. The September 2010 interim rule requires creditors who extend consumer credit secured by real property or a dwelling to disclose summary information about interest rates and payment changes in a tabular format. The Board is issuing this interim rule to clarify certain provisions of the September 2010 interim rule. Specifically, this rule clarifies the requirements for adjustable-rate transactions that are "5/1 ARM" loans. It corrects the requirements for interest-only loans to clarify that the disclosures should reflect the date of the interest rate change rather than the date the first payment is due under the new rate. This interim rule also revises the definition of "negative amortization loans" to clarify which transactions are covered by the special disclosure requirements for such loans.

DATES: This interim rule is effective January 30, 2011. Compliance with its provisions is optional, however, for transactions for which an application for credit is received by the creditor before October 1, 2011. This interim rule does not change the January 30, 2011 mandatory compliance date of the September 2010 interim rule. Comments on this interim rule must be received on or before February 28, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1366, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/*

generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Jamie Z. Goodson, Attorney, or Paul Mondor, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, and administrative sanction.

B. MDIA Amendments to TILA and Regulation Z

On July 30, 2008, Congress enacted the Mortgage Disclosure Improvement Act of 2008 (the MDIA).[1] The MDIA amended TILA and requires transaction-specific TILA disclosures to be provided within three business days after an application for a closed-end mortgage loan is received and before the consumer has paid any fee (other than a fee for obtaining the consumer's credit history).[2] Creditors also must mail or deliver these early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The MDIA also expanded coverage of Regulation Z's early disclosure requirement to include loans secured by a dwelling even when it is not the consumer's principal dwelling. The Board implemented these MDIA requirements in final rules published May 19, 2009, which became effective July 30, 2009 as required by the statute. *See* 74 FR 23289; May 19, 2009 (MDIA Final Rule).

The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, along with a statement that there is no guarantee the consumer will be able to refinance the transaction in the future. Under the statute, these provisions of the MDIA will become effective on January 30, 2011. On September 24, 2010, the Board published an interim rule to implement these requirements. *See* 75 FR 58470; Sept. 24, 2010 (September 2010 Interim Rule). The Board is issuing this interim rule to make certain clarifying changes to provisions in the September 2010 Interim Rule.

II. Summary of the Interim Rule

The MDIA amended TILA to require creditors to disclose examples of rates and payments, including the maximum rate and payment, for loans with variable rates or payments. The act also requires creditors to disclose a statement that consumers should not assume they can refinance their loans. On July 23, 2009, the Board published a proposed rule to revise the disclosure rules for closed-end credit secured by real property or a consumer's dwelling. *See* 74 FR 43232; Aug. 26, 2009 (2009 Closed-End Proposal). Among other things, the 2009 Closed-End Proposal included provisions to implement MDIA's new interest rate and payment disclosure requirements. Because the 2009 Closed-End Proposal is not expected to be finalized before the January 30, 2011 effective date of the MDIA disclosure requirements, the Board issued the September 2010 Interim Rule to provide creditors with the guidance necessary to comply by the statutory deadline. The September 2010 Interim Rule is substantially similar to the provisions of the 2009 Closed-End Proposal that implemented the interest rate and payment disclosure requirements of the MDIA.

Under the September 2010 Interim Rule, creditors will be required to disclose in a tabular format the contract interest rate together with the corresponding monthly payment, including an estimated amount for any escrows for taxes and property and/or mortgage insurance. Special disclosure requirements are imposed for adjustable-rate or step-rate loans to show the interest rate and payment at consummation, the maximum interest rate and payment at any time during the first five years after consummation, and the maximum interest rate and payment possible during the life of the loan. Additional special disclosures are required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments. Finally, consistent with the statute, the September 2010 Interim Rule requires the disclosure of a statement that there is no guarantee the consumer will be able to refinance the loan with a new transaction in the future.

This interim rule clarifies the requirement in the September 2010 Interim Rule that, for adjustable-rate and step-rate loans, creditors disclose the maximum interest rate and payment during the first five years. As modified by this rule, creditors must base their disclosures on the first five years after the first regular periodic payment due date, rather than the first five years after consummation. The clarification is intended to ensure the disclosures are consistent with the manner in which payments are typically structured for adjustable-rate transactions that are "5/1 ARM" loans.

In addition, this interim rule clarifies the requirements for disclosing the payments on an "interest-only loan." Under the September 2010 Interim Rule, for each interest rate disclosed, the creditor must disclose the earliest date that rate may apply and the corresponding periodic payment. For an interest-only loan, if the corresponding payment will be applied to both accrued interest and principal, the September 2010 Interim Rule further requires the creditor to disclose the earliest date that such payments will be required. This interim rule would eliminate the potential conflict from disclosing two

[1] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110–289, enacted on July 30, 2008. The MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

[2] The MDIA codified some requirements adopted by the Board in a July 2008 final rule prior to the MDIA's enactment. 73 FR 44522, July 30, 2008 (2008 HOEPA Final Rule). To ease discussion, the description of the MDIA's disclosure requirements includes the requirements of the 2008 HOEPA Final Rule.

different dates in the same column, by clarifying that creditors should disclose the earliest date that the interest rate becomes effective rather than the date that the first payment is due under the new rate.

Also under this interim rule, the definition of "negative amortization loan" is being revised to clarify which transactions are covered by the special disclosure requirements for such loans. Those disclosures were designed to show consumers how their periodic payments could increase over time and to enable comparisons between the consequences for consumers of making "minimum" and "full" payments. The revision would clarify that these disclosures apply only to loans where consumers are allowed to make minimum payments that result in negative amortization. Thus, the revised definition of "negative amortization loan" excludes loan products that do not have a minimum required payment that results in negative amortization. For example, some loans that are designed for borrowers with seasonal employment require level, amortizing payments, but do not require payments in certain months; during months when no payment is made the accrued interest increases the loan balance. As clarified, the special disclosure requirements for negative amortization loans do not apply to the excluded loans, even though some negative amortization can occur because of the capitalization of accrued interest from time to time. Such loans will be disclosed under the rules for amortizing loans.

Finally, this interim rule clarifies how the provisions in the September 2010 Interim Rule apply to home construction loans. A new staff comment accompanying Appendix D clarifies that, when a construction loan secured by real property or a dwelling that may be permanently financed by the same creditor is disclosed as more than one transaction, the construction financing must be disclosed under the new rules for interest rate and payment summary tables. On the other hand, if the creditor discloses the construction and permanent financing as a single transaction, the summary table should reflect only the permanent financing, while the construction financing should be disclosed only with a statement outside the table that interest payments must be made and the timing of such payments.

III. Legal Authority

A. Rulemaking Authority

TILA Section 105(a) directs the Board to prescribe regulations to carry out the Act's purposes. 15 U.S.C. 1604(a). TILA also authorizes the Board to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion.

B. Authority To Issue Interim Rule

The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice before promulgation of regulations. *See* 5 U.S.C. 553(b). The 2009 Closed-End Proposal provided the public with notice and an opportunity to comment on the Board's proposed disclosure changes, including the proposed interest rate and payment summary tables that would implement the MDIA. The September 2010 Interim Rule adopted only those provisions of the 2009 Closed-End Proposal that implement the MDIA requirements that will become effective on January 30, 2011. Accordingly, the Board believed that the September 2010 Interim Rule complied with the APA's public notice and opportunity to comment requirement. The Board adopted the provisions concerning interest rates and payments as an interim rule, rather than as a final rule, because the Board intended to conduct additional testing of these and other disclosure requirements, including quantitative testing, and may revise the interim provisions further in light of further testing results. The Board sought to permit further public comment while also giving the provisions effect so that creditors would have the guidance they need and the time to implement it by January 30, 2011, as discussed above.

For the same reasons, the Board is now implementing these clarifications by interim rule to ensure timely publication and effectiveness of the additional guidance it provides before the statutory requirements become effective. The additional guidance is needed to prevent compliance burdens that otherwise would result from certain conflicts and uncertainties in the existing provisions as implemented by the September 2010 Interim Rule.

Comments on the September 2010 Interim Rule raised additional issues that are not being addressed at this time. The Board believes that issuing a permanent final rule imposing further changes in creditors' disclosure so soon before the mandatory January 30, 2011 compliance date would impose undue burden on creditors. Accordingly, this interim rule is being published only to clarify certain issues that created uncertainty for creditors on how to comply with the September 2010 Interim Rule before the statutory effective date. Other comments received on the September 2010 Interim Rule, as well as this interim rule, can be taken into consideration before publication of a permanent final rule.

IV. Overview of Comments Received on the Interest Rate and Payment Summary Tables

The September 2010 Interim Rule provided an overview of comments on the 2009 Closed-End Proposal. *See* 75 FR 58470, 58472; Sept. 24, 2010. In response to the September 2010 Interim Rule, the Board received 36 comments. Most of those were from creditors and their trade associations and form-software vendors that provide creditors with systems to generate disclosures. They raised various practical concerns with the new requirements. The concerns addressed in this interim rule are described below.

Several commenters expressed concern about the requirement that the summary table for adjustable-rate and step-rate loans include the maximum rate applicable during the first five years after consummation. They noted that "5/1 ARM" loans typically provide for 60 regular periodic payments at the initial rate and that the rate typically does not adjust until at least the 61st full month after consummation. As a result, the payment summary table as prescribed in the September 2010 Interim Rule would not show the rate increase at the first adjustment of a typical "5/1 ARM" loan if the table is based on interest rate changes occurring during the first five years after consummation.

For interest-only loans, some commenters questioned the requirement that creditors disclose the earliest date on which the new interest rate can apply as well as the earliest date on which the corresponding payment would be due at the new rate. Because interest is paid in arrears on most mortgage transactions, those two dates are generally one month apart. Commenters noted that the structure of the table allows for only one date in each column.

Commenters also asked the Board to clarify whether certain types of loan products should be disclosed as "negative amortization loans." They noted that some loan products have features that may result in the principal balance increasing even though the consumer does not have the right on each due date to choose between making a minimum payment that causes

negative amortization and making a larger payment. For example, some loans provide for regular, amortizing payments, but have irregular payment schedules and periods when no payment is due, during which accrued interest is added to the principal balance. Commenters also noted that some loans have rates that adjust without a corresponding adjustment in the periodic payment in order to maintain the consumer's payment at a level amount; if the interest rate increases during the loan term, the principal balance may increase. These commenters stated that such products cannot be disclosed as negative amortization loans under the September 2010 Interim Rule, which calls for parallel disclosures of the consumer's minimum payment and full payment options.

Many of the commenters asked how the requirements for the new rate and payment summary table in § 226.18(s) affect the guidance in Appendix D for disclosing multiple-advance construction loans. Most home construction loans are covered by § 226.18(s) because they are secured by real property or a dwelling. Specifically, commenters sought clarification on whether the guidance in Appendix D for disclosing the "repayment schedule" for a construction loan remains applicable or, alternatively, whether the requirements of § 226.18(s) override the existing guidance in Appendix D.

The Board is adopting this interim rule to address the foregoing four issues. The Board is also adopting minor, technical revisions to address other uncertainties raised by the commenters, as discussed below.

V. Section-by-Section Analysis

Section 226.18 Content of Disclosures

18(h) Total of Payments

The Board is revising staff comment 18(h)–2 to clarify how to calculate the total of payments under § 226.18(h) for transactions secured by real property or a dwelling. Existing comment 18(h)–2 states that the total of payments is the sum of the payments disclosed under § 226.18(g). For transactions subject to § 226.18(s), however, no payment schedule will be disclosed under § 226.18(g). Accordingly, the Board is revising comment 18(h)–2 to provide that creditors should continue to follow the rules in § 226.18(g) and associated commentary, and comments 17(c)(1)–8 and –10 for adjustable-rate transactions, to calculate the total of payments for transactions secured by real property or a dwelling.

18(s) Interest Rate and Payment Summary for Mortgage Transactions

The Board is adopting new commentary language to clarify that references to "monthly" payments in the disclosures may be modified to reflect other periods when applicable, such as when payments are due quarterly instead of monthly. Section 226.18(s)(2)(i)(B)(*1*) provides that the interest rate at consummation must be disclosed and labeled "introductory rate and monthly payment." Under §§ 226.18(s)(3)(i)(D) and 226.18(s)(3)(ii)(D), for each interest rate disclosed under § 226.18(s)(2), the creditor must also disclose the sum of the corresponding periodic payment and any estimated escrow payment, which must be labeled "total estimated monthly payment." The Board has also published model clauses that use the word "monthly" in describing the disclosed payments.

Existing comment 18(s)(3)(i)(D)–1 provides that, if periodic payments are not due monthly, the creditor should use the appropriate term such as "quarterly" or "annually." There is no similar guidance, however under the other provisions. The Board is revising comment 18(s)–1 to clarify that the same guidance applies to §§ 226.18(s)(2)(i)(B)(*1*) and 226.18(s)(3)(ii)(D), as well as the model clauses.

18(s)(2) Interest Rates

18(s)(2)(i) Amortizing Loans

Maximum interest rate during first five years. The Board is revising § 226.18(s)(2)(i)(B)(*2*) to clarify the rule's application to adjustable-rate transactions that are "5/1 ARM" loans. As adopted in the September 2010 Interim Rule, § 226.18(s)(2)(i)(B)(*2*) requires disclosure of the maximum possible rate at any time during the first five years after consummation and the earliest date that rate may apply. As noted above, some commenters questioned whether the Board intended creditors to disclose the first adjustment for "5/1 ARMs" under this provision. Commenters stated the intent of the rule is unclear because the first rate adjustment generally occurs more than five years after consummation. For example, assuming a "5/1 ARM" loan is consummated on August 16, 2011, the first payment due date typically is October 1, 2011. The first rate adjustment then occurs on the due date of the 60th regular payment, September 1, 2016, which is more than five years after consummation. The Board intended that creditors disclose the first rate adjustment for a "5/1 ARM." To ensure that the first rate adjustment will be disclosed for "5/1 ARMs," the Board is revising § 226.18(s)(2)(i)(B)(*2*) to clarify that creditors should disclosure the maximum possible rate that will apply at any time during the first five years after the date on which the first regular periodic payment will be due, rather than after consummation.

Payment increases without regard to an interest rate adjustment. The Board is revising comment 18(s)(2)(i)(C)–1 to clarify that, for interest-only loans, creditors must disclose the change in the periodic payment when the consumer begins making payments that include principal as well as interest. Under § 226.18(s)(2)(i)(C), if an amortizing loan provides for a payment increase without regard to an interest rate adjustment (as described in § 226.18(s)(3)(i)(B)), the creditor must disclose an additional column showing the rate in effect at the time of such a payment increase and the date on which the payment increase will occur. Some commenters suggested that this additional column would not be required for an interest-only loan to show the change in the periodic payment when the consumer begins making payments that include principal. These commenters believe that, under the September 2010 Interim Rule, § 226.18(s)(3)(i)(B) does not apply to interest-only loans. In fact, the disclosure requirement of § 226.18(s)(2)(i)(C) applies to all amortizing loans, including interest-only loans, if the consumer's payment can increase in the manner described in § 226.18(s)(3)(i)(B), even if it is not the type of loan covered by § 226.18(s)(3)(i). In such a case, if the transaction is an interest-only loan, the creditor also must disclose the corresponding periodic payment pursuant to § 226.18(s)(3)(ii). The Board is revising comment 18(s)(2)(i)(C)–1 to clarify this point. The Board is also revising this comment to clarify that payment increases without regard to an interest rate increase do not include minor payment variations resulting solely from the fact that months have different numbers of days.

18(s)(3) Payments for Amortizing Loans

18(s)(3)(i) Principal and Interest Payments

Escrows. The Board is revising § 226.18(s)(3)(i)(C) to clarify when creditors must disclose estimated payments for taxes and insurance. Under § 226.18(s)(3)(i)(C) and accompanying comment 18(s)(3)(i)(C)–1, an estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow

account for such amounts, even if the escrow account is not required by the creditor. The regulation also states that the creditor must disclose that the escrow account is required if that is the case. Under the 2009 Closed-End Proposal, the statement that an escrow account is required would have been implemented in a separate part of the revised disclosure, outside of the interest rate and payment summary table. The inclusion of this requirement in the September 2010 Interim Rule, which implemented only the summary table, was an error. This requirement is being removed. Some commenters stated that the text of the regulation as implemented by the September 2010 Interim Rule could be read to suggest that the amounts for taxes and insurance should be disclosed only if the escrow account was required by the creditor. The Board's intent under the September 2010 Interim Rule, however, was to require disclosure of the estimated escrow payment if an escrow account will be established, whether the escrow account is required or not, as comment 18(s)(3)(i)(C)–1 indicates. Accordingly, the Board is revising the text of § 226.18(s)(3)(i)(C) to clarify the scope of the disclosure requirement.

The Board also is revising comment 18(s)(3)(i)(C)–1 to clarify how creditors should estimate the amounts for future taxes and insurance when such amounts must be disclosed in connection with changes in the periodic payment after consummation. Some commenters noted that estimating future taxes and insurance would be highly speculative. The September 2010 Interim Rule generally does not require creditors to make projections about future tax rates and insurance premiums. Creditors might be aware, however, of changes in mortgage insurance premiums that are based on the outstanding loan balance. Accordingly, the Board is revising comment 18(s)(3)(i)(C)–1 to clarify that, when escrow payments must be disclosed in multiple columns of the table, each column should use the same estimate for taxes and insurance except that the estimate should reflect changes in the periodic mortgage insurance premiums that are known to the creditor at the time the disclosure is made. The comment further explains that the estimated mortgage insurance premiums should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under § 226.18(s)(2) and accompanying commentary.

18(s)(3)(ii) Interest-Only Payments

Payment date. The Board is revising § 226.18(s)(3)(ii)(B) to remove the requirement to disclose the earliest date on which the payment disclosed under that section will be required. Under the September 2010 Interim Rule, for each interest rate disclosed, the creditor must disclose the earliest date that rate may apply and the corresponding periodic payment. For an interest-only loan, if the corresponding payment will be applied to both accrued interest and principal, § 226.18(s)(3)(ii)(B) further requires the creditor to disclose the earliest date that such payments will be required. Commenters questioned the requirement for disclosing two different dates in the same column and the potential for confusion. Because interest is paid in arrears on most mortgage transactions, those two dates are generally one month apart; commenters also noted that the structure of the table allows for only one date in each column.

The date in each column is intended to be the earliest date the interest rate may apply, not the date that the corresponding payment will take effect. Accordingly, the Board is revising § 226.18(s)(3)(ii)(B) by removing the language that requires creditors to disclose "the earliest date that such payments will be required." As revised, this interim rule clarifies that creditors should disclose the earliest date that the interest rate becomes effective rather than the date that the first payment is due under the new rate. Revised § 226.18(s)(3)(ii)(B) also clarifies that the itemized amounts disclosed as being applied to interest and principal when a consumer begins making principal and interest payments for an interest-only loan are those amounts for the first such payment.

18(s)(7) Definitions

"*Negative amortization loans.*" The Board is revising § 226.18(s)(7)(v) to clarify what types of loans are subject to the special disclosure requirements for "negative amortization loans." As adopted by the September 2010 Interim Rule, § 226.18(s)(7)(v) defines "negative amortization" as the "payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation." The rule also defines a "negative amortization loan" as "a loan that permits payments resulting in negative amortization, other than a reverse mortgage subject to § 226.33." Thus, some transactions that do not provide for multiple payment options, but that have repayment terms that may result in negative amortization, can be construed as negative amortization loans for purposes of the interest rate and payment summary table required by § 226.18(s). The special disclosure requirements for negative amortization loans and the model clause for such loans are intended to show consumers the effects of making minimum payments that result in negative amortization in comparison to the effects of making fully amortizing payments; the Board did not intend to apply those requirements to loans that do not provide for such minimum payments.

Accordingly, the Board is revising the definition of "negative amortization loan" in § 226.18(s)(7) to clarify which transactions are subject to the disclosure requirements for such loans in § 226.18(s)(2)(ii). Specifically, under the revised definition the special disclosures for "negative amortization loans" would apply only to loan products that have minimum required payments that result in negative amortization. For example, certain loans that are designed for borrowers with seasonal income require periodic amortizing payments but do not require the borrower to make payments in certain months; during months when no payment is made the accrued interest increases the principal balance. Also, some adjustable-rate loans provide for fixed periodic payments that do not adjust when the interest rate adjusts; in cases where the interest rate increases during the loan term, the additional accrued interest increases the principal balance. As clarified, the special disclosure requirements for negative amortization loans will not apply to such loans, even though the principal balance might increase during the loan term when accrued interest is capitalized. New comment 18(s)(7)–1 has been added to note that such loans will be disclosed under the rules for amortizing loans.

The revised definition will limit the meaning of "negative amortization loan" to loan products that can be disclosed meaningfully under the special rules for negative amortization loans. If a loan provides for a minimum periodic payment that causes negative amortization, creditors must disclose the corresponding fully amortizing payment in a parallel row of the table, as contemplated by §§ 226.18(s)(2)(ii) and 226.18(s)(4) and Model Clause H–4(G).

Appendix D—Multiple-Advance Construction Loans

The Board is adopting a new comment under Appendix D to clarify

the impact of § 226.18(s) on the appendix's guidance for disclosing the "repayment schedule" when construction financing is secured by real property or a dwelling. A creditor that also might permanently finance the construction phase has the option of disclosing the construction and permanent phases as separate transactions or as a single transaction. *See* § 226.17(c)(6)(ii). Part I of Appendix D provides guidance for disclosing the construction financing as a separate transaction, while Part II provides guidance on disclosing the construction and permanent financing as one transaction.

For loans secured by real property or a dwelling, if a creditor elects to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed in accordance with § 226.18(s), as adopted by the September 2010 Interim Rule and modified by this interim rule. Under § 226.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in Appendix D, Part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 226.18(g)" does not apply because the transaction is governed by § 226.18(s) rather than § 226.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to § 226.18(s)(5). This guidance is being added to the commentary as new comment App. D–6.

On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, the construction phase must be disclosed pursuant to Appendix D, Part II.C, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The rate and payment summary table disclosed under § 226.18(s) must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of § 226.18(s) to the permanent phase only. For example, under § 226.18(s)(2)(i)(A) or § 226.18(s)(2)(i)(B)(*1*), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase. This guidance is also reflected in new comment App. D–6.

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

This interim rule amends comment App. G and H–1 to provide that creditors may revise the column heading in Model Clause H–4(H) to reflect the column heading required by § 226.18(s)(2)(i)(C) of the regulation. Commenters noted a discrepancy between § 226.18(s)(2)(i)(C) and Model Clause H–4(H). Section 226.18(s)(2)(i)(C) states that the column heading must be labeled as "first adjustment" if the loan is an adjustable-rate mortgage or, otherwise, labeled as "first increase." Due to a technical error, the heading in Model Clause H–4(H) is incorrectly labeled "maximum ever." TILA Section 105(b) provides creditors with a safe harbor if they use any model form or clause published by the Board. Thus, use of Model Clause H–4(H) as published in the September 2010 Interim Rule is deemed to be in compliance with § 226.18(s)(2)(i)(C). Comment App. G and H–1 is being amended, however, to clarify that the same safe harbor is available to creditors that use the model clause but alter the column heading to read "first adjustment" or "first increase," as applicable, in compliance with the literal requirement of § 226.18(s)(2)(i)(C).

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed this interim rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Board also conducted such a review for the September 2010 Interim Rule. *See* 75 FR 58470, 58479–80; Sept. 24, 2010. The Board believes that the technical revisions made by this interim rule do not alter the findings in the Board's previous PRA review. The revisions do not add to the disclosure requirements adopted in the September 2010 Interim Rule but, rather, only resolve uncertainties and clarify under certain circumstances which of those disclosure requirements apply to which types of mortgage loan products and how. Accordingly, for purposes of this interim rule, the Board refers to the findings of the PRA review set forth in the September 2010 Interim Rule.

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VII. Regulatory Flexibility Analysis

In accordance with Section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, the Board published a final regulatory flexibility analysis for the amendments to Regulation Z in the September 2010 Interim Rule. *See* 75 FR 58470, 58480–82; Sept. 24, 2010. For the reasons discussed above regarding the PRA, the Board believes that this interim rule does not affect the Board's prior regulatory flexibility analysis and that it therefore continues to apply for purposes of this interim rule. The Board notes, in fact, that the revisions this interim rule makes to the provisions of Regulation Z adopted in the September 2010 Interim Rule are for the purpose of resolving conflicts and uncertainties, thus facilitating compliance for creditors. Consequently, to the extent this interim rule has any effect on the Board's prior regulatory flexibility analysis, it is to reduce the overall impact of the September 2010 Interim Rule on all entities, including small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

Subpart C—Closed-End Credit

■ 2. Section 226.18 is amended by revising paragraphs (s)(2)(i)(B)(*2*),

(s)(3)(i)(C), (s)(3)(ii)(B), and (s)(7)(v) to read as follows:

§ 226.18 Content of disclosures.

* * * * *

(s) * * *

(2) * * *

(i) * * *

(B) * * *

(*2*) The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due and the earliest date on which that rate may apply, labeled as "maximum during first five years"; and

* * * * *

(3) * * *

(i) * * *

(C) If an escrow account will be established, an estimate of the amount of taxes and insurance, including any mortgage insurance, payable with each periodic payment; and

* * * * *

(ii) * * *

(B) If the payment will be applied to accrued interest and principal, an itemization of the amount of the first such payment applied to accrued interest and to principal, labeled as "interest payment" and "principal payment," respectively;

* * * * *

(7) * * *

(v) The term "amortizing loan" means a loan in which payment of the periodic payments does not result in an increase in the principal balance under the terms of the legal obligation; the term "negative amortization" means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation; the term "negative amortization loan" means a loan, other than a reverse mortgage subject to § 226.33, that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization.

* * * * *

■ 3. In Supplement I to Part 226:

■ A. Under *Section 226.18—Content of Disclosures, 18(h) Total of payments,* Paragraph 2 is revised.

■ B. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions,* Paragraph 1 is revised.

■ C. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, 18(s)(2) Interest rates, 18(s)(2)(i) Amortizing loans, Paragraph 18(s)(2)(i)(C),* paragraph 1 is revised.

■ D. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, 18(s)(3) Payments for amortizing loans, Paragraph 18(s)(3)(i)(C),* paragraph 1 is revised.

■ E. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions,* new *18(s)(7) Definitions* and paragraph 1 are added.

■ F. Under Appendix D—Multiple Advance Construction Loans, new paragraph 6 is added.

■ G. Under Appendices G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1 is revised.

The additions and revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.18—Content of Disclosures

18(h) Total of payments.

* * * * *

2. *Calculation of total of payments.* The total of payments is the sum of the payments disclosed under § 226.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph. To calculate the total of payments amount for transactions subject to § 226.18(s), creditors should use the rules in § 226.18(g) and associated commentary and, for adjustable-rate transactions, comments 17(c)(1)–8 and –10.

* * * * *

18(s) Interest rate and payment summary for mortgage transactions.

1. *In general.* Section 226.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for mortgage loans. The information in § 226.18(s)(2)–(4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in Appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where § 226.18(s)(2)–(4) or the applicable model clause requires that a column or row of the table be labeled using the word "monthly" but the periodic payments are not due monthly, the creditor should use the appropriate term, such as "bi-weekly" or "quarterly." In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 226.18(s) in § 226.18(s)(7).

* * * * *

Paragraph 18(s)(2)(i)(C)

1. *Payment increases.* For some loans, the payment may increase following consummation for reasons unrelated to an interest rate adjustment. For example, an adjustable-rate mortgage may have an introductory fixed-rate for the first five years following consummation and permit the borrower to make interest-only payments for the first three years. The disclosure requirement of § 226.18(s)(2)(i)(C) applies to all amortizing loans, including interest-only loans, if the consumer's payment can increase in the manner described in § 226.18(s)(3)(i)(B), even if it is not the type of loan covered by § 226.18(s)(3)(i). Thus, § 226.18(s)(2)(i)(C) requires that the creditor disclose the interest rate that corresponds to the first payment that includes principal as well as interest, even though the interest rate will not adjust at that time. In such cases, if the loan is an interest-only loan, the creditor also must disclose the corresponding periodic payment pursuant to § 226.18(s)(3)(ii). The table would show, from left to right: The interest rate and payment at consummation with the payment itemized to show that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment during the first five years; and the maximum possible interest rate and payment. The disclosure requirements of § 226.18(s)(2)(i)(C) do not apply to minor payment variations resulting solely from the fact that months have different numbers of days.

* * * * *

Paragraph 18(s)(3)(i)(C).

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. If the escrow account will include amounts for items other than taxes and insurance, such as homeowners association dues, the creditor may but is not required to include such items in the estimate. When such estimated escrow payments must be disclosed in multiple columns of the table, such as for adjustable- and step-rate transactions, each column should use the same estimate for taxes and insurance except that the estimate should reflect changes in periodic mortgage insurance premiums that are known to the creditor at the time the disclosure is made. The estimated amounts of mortgage insurance premiums should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under § 226.18(s)(2) and accompanying commentary. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums included in the escrow payment under § 226.18(s)(3)(i)(C), amounts

included in the escrow payment disclosure such as property taxes and homeowner's insurance generally are not finance charges under § 226.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

* * * * *

18(s)(7) Definitions.

1. *Negative amortization loans.* Under § 226.18(s)(7)(v), a negative amortization loan is one that requires only a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. For such a loan, § 226.18(s)(4)(iii) requires creditors to disclose the fully amortizing periodic payment for each interest rate disclosed under § 226.18(s)(2)(ii), in addition to the minimum periodic payment, regardless of whether the legal obligation explicitly recites that the consumer may make the fully amortizing payment. Some loan types that result in negative amortization do not meet the definition of negative amortization loan for purposes of § 226.18(s). These include, for example, loans requiring level, amortizing payments but having a payment schedule containing gaps during which interest accrues and is added to the principal balance before regular, amortizing payments begin (or resume). For example, "seasonal income" loans may provide for amortizing payments during nine months of the year and no payments for the other three months; the required minimum payments (when made) are amortizing payments, thus such loans are not negative amortization loans under § 226.18(s)(7)(v). An adjustable-rate loan that has fixed periodic payments that do not adjust when the interest rate adjusts also would not be disclosed as a negative amortization loan under § 226.18(s). For example, assume the initial rate is 4%, for which the fully amortizing payment is $1500. Under the terms of the legal obligation, the consumer will make $1500 monthly payments even if the interest rate increases, and the additional interest is capitalized. The possibility (but not certainty) of negative amortization occurring after consummation does not make this transaction a negative amortization loan for purposes of § 226.18(s). Loans that do not meet the definition of negative amortization loan, even if they may have negative amortization, are amortizing loans and are disclosed under §§ 226.18(s)(2)(i) and 226.18(s)(3).

* * * * *

Appendix D—Multiple Advance Construction Loans

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6. *Relation to § 226.18(s).* A creditor must disclose an interest rate and payment summary table for transactions secured by real property or a dwelling, pursuant to § 226.18(s), instead of the general payment schedule required by § 226.18(g). Accordingly, home construction loans that are secured by real property or a dwelling are subject to § 226.18(s) and not § 226.18(g). Under § 226.176(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

i. If a creditor uses Appendix D and elects pursuant to § 226.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in § 226.18(s). Under § 226.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in Appendix D, Part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 226.18(g)" does not apply because the transaction is governed by § 226.18(s) rather than § 226.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to § 226.18(s)(5).

ii. On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, the construction phase must be disclosed pursuant to Appendix D, Part II.C, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The rate and payment summary table disclosed under § 226.18(s) must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of § 226.18(s) to the permanent phase only. For example, under § 226.18(s)(2)(i)(A) or § 226.18(s)(2)(i)(B)(*1*), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21, or to the model clauses in H–4(E), H–4(F), H–4(G), and H–4(H). Creditors may modify the heading of the second column shown in Model Clause H–4(H) to read "first adjustment" or "first increase," as applicable, pursuant to § 226.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 21, 2010. Certain amendments to the Official Staff Commentary were approved by the Director of the Division of Consumer and Community Affairs, acting under authority delegated by the Board.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–32534 Filed 12–28–10; 8:45 am]

BILLING CODE 6210–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

[Docket No. SSA–2010–0033]

RIN 0960–AH24

Amendments to Regulations Regarding Eligibility for a Medicare Prescription Drug Subsidy

AGENCY: Social Security Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: We are revising our regulations to incorporate changes to the Medicare prescription drug coverage low-income subsidy (Extra Help) program made by the Affordable Care Act which was enacted on March 23, 2010. Under our interpretation of section 3304 of the Affordable Care Act and this interim final rule, if the death of a beneficiary's spouse would decrease or eliminate the subsidy provided by the Extra Help program, we will, based on a determination, or redetermination, extend the effective period of eligibility for the most recent determination or redetermination until 1 year after the

month following the month we are notified of the death of the spouse. These regulatory changes will allow us to implement this provision of the Affordable Care Act when it goes into effect on January 1, 2011. We are also revising our regulations to incorporate changes made by the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), which affect the way we account for income and resources when determining eligibility for the Extra Help program. The statute provides that we no longer count as a resource the value of any life insurance policy for Extra Help applications filed, or redeterminations that are effective, on or after January 1, 2010. In addition, we will no longer count as income the help a beneficiary receives when someone else provides food and shelter, or pays household bills for food, mortgage, rent, electricity, water, property taxes, or heating fuel or gas. These revisions will update our rules to reflect these statutory changes.

DATES: *Effective Date:* This interim final rule will be effective January 1, 2011.

Comment Date: To ensure that your comments are considered, we must receive them no later than February 28, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0033 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2010–0033. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Craig Streett, Office of Income Security Programs, Social Security Administration, 2–R–24 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9793. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

Medicare prescription drug coverage is a voluntary program that covers various prescription drugs. The regulations and requirements for the program are codified in 42 CFR Part 423. The Centers for Medicare & Medicaid Services (CMS) promulgates rules and regulations concerning the Medicare program. Anyone who meets the requirements in 42 CFR 423.30(a) can enroll in Medicare prescription drug coverage. Medicare prescription drug coverage beneficiaries are responsible for deductibles, cost-sharing, and monthly premiums towards the cost of covered prescriptions. Costs vary by plan.

Beneficiaries with Medicare prescription drug coverage who have limited income and resources may qualify for Extra Help with their monthly premiums, deductibles, and cost-sharing for Medicare prescription drug coverage. To qualify for Extra Help a Medicare beneficiary must reside in one of the 50 states or the District of Columbia and must have resources and income within specific limits.

Congress passed MIPPA in July of 2008.[1] Section 116 of MIPPA exempts certain items from income and resources determinations of Extra Help eligibility for applications filed on or after January 1, 2010. We also apply these exemptions to redeterminations that become effective on or after January 1, 2010. The items exempted under section 116 are the cash surrender value of life insurance and in-kind support and maintenance. To implement these requirements of MIPPA, we issued guidance in August 2009 and discontinued counting these exempted items for applications and redeterminations in accordance with the requirements of the statute. Accordingly, we no longer count as income the help a beneficiary receives when someone else provides food and shelter, or pays for food, mortgage, rent, heating fuel or gas, electricity, water, or property taxes. To reflect these statutory exemptions, we have revised sections 418.3335(b) and 418.3350 and deleted section 418.3345 of our regulations.

In March 2010, Congress passed the Affordable Care Act, which extends the effective date of a determination or redetermination of an Extra Help subsidy due to the death of a spouse.[2] Currently, any adjustment in the amount of Extra Help the beneficiary receives is effective the month after the month in which we are notified of the death of a spouse. In some cases, the death of a spouse could result in a decrease in the amount or loss of Extra Help eligibility for the beneficiary.

Effective January 1, 2011, if the death of the spouse would decrease or eliminate the subsidy provided by the Extra Help program, we will extend the effective period for a determination or redetermination until 1 year after the date on which it would otherwise cease to be effective—that is, the month after the month we are notified of the death of the spouse. In order to reflect the changes made by the Affordable Care Act, we have revised sections 418.3120 and 418.3123 of our regulations.

Our current Extra Help rules at 418.3350(b) state that we do not count as income the unearned income described in sections 416.1124(b), (c)(1) through (c)(12), and (c)(14) through (c)(21). Our current rule omits a reference to paragraph 416.1124(c)(22), which we added after we published section 418.3350 in December 2005. We are updating the reference in section 418.3350 to correct this omission. This is a technical change only and does not affect the substance of our rules.

Clarity of These Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on this interim final rule, we invite your comments on how to make rules easier to understand.

For example:

[1] Public Law 110–275.

[2] Public Law 111–148 § 3304.

• Would more, but shorter, sections be better?
• Are the requirements in the rule clearly stated?
• Have we organized the material to suit your needs?
• Could we improve clarity by adding tables, lists, or diagrams?
• What else could we do to make the rule easier to understand?
• Does the rule contain technical language or jargon that is not clear?
• Would a different format make the rule easier to understand, *e.g.* grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will start to use this rule on the effective date shown under DATES earlier in this preamble.

We are also inviting public comment on the changes made by this rule. We will consider any relevant comments we receive. We will publish a final rule to respond to those comments and to make any appropriate changes.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.[3]

We find good cause exists for proceeding without prior public notice and comment with respect to the new rules that exempt in-kind support and maintenance and the cash surrender value of life insurance policies from being counted as income or resources for determining Extra Help eligibility because the policies implemented with these rules are nondiscretionary under MIPPA. We implemented the policies on their effective date of January 1, 2010. Accordingly, we find that prior public comment with respect to these changes is unnecessary.

Beginning January 1, 2011, section 3304 of the Affordable Care Act requires us to implement the provision that extends the effective date of a decrease or elimination of an Extra Help subsidy due to the death of a spouse. In light of the March 23, 2010, enactment date of the Affordable Care Act and our need to have authority in place to implement section 3304 beginning January 1, 2011, we do not have sufficient time to provide a notice and comment period before promulgating final rules in order to begin administering the provision in a timely manner. Therefore, we find that the use of the APA's notice and comment rulemaking procedures would be impracticable in this situation. However, we are inviting public comment on the rule and will consider any relevant comments we receive within 60 days of the publication of the rule.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this rule.[4] For the reasons stated above, we find it is impracticable and unnecessary to delay the effective date of the changes we are making in this interim final rule. Accordingly, we are making this interim final rule effective January 1, 2011.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this interim final rule meets the criteria for a significant regulatory action under Executive Order 12866. It was subject to OMB formal review.

Regulatory Flexibility Act

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 93.770, Medicare Prescription Drug Coverage; 96.002 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: December 23, 2010.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we amend 20 CFR chapter III, part 418, subpart D as set forth below:

PART 418—MEDICARE SUBSIDIES

Subpart D—Medicare Part D Subsidies

■ 1. The authority citation for subpart D of part 418 continues to read as follows:

Authority: Secs. 702(a)(5) and 1860D–1, 1860D–14 and –15 of the Social Security Act (42 U.S.C. 902(a)(5), 1395w–101, 1395w–114, and –115).

■ 2. Amend § 418.3120 to revise paragraph (a)(3) and add paragraph (b)(4) to read as follows:

§ 418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?

(a) * * *

(3) Subject to the provisions of paragraph (b)(4) of this section, your spouse, who lives with you, dies.

* * * * *

(b) * * *

(4) If your spouse who lives with you dies, your spouse's death may result in changes in your income or resources that could decrease or eliminate your subsidy. If we are informed of the death of your spouse and the death would cause a decrease in or elimination of your subsidy, we will notify you that we will not immediately change your subsidy because of your spouse's death. We will defer your redetermination for 1 year from the month following the month we are notified of the death of your spouse, unless we receive a report of another event specified in 418.3120(a) that would affect your eligibility for a subsidy.

■ 3. Amend § 418.3123 to add paragraph (e) to read as follows:

§ 418.3123 When is a change in your subsidy effective?

* * * * *

(e) *Special rule for widows and widowers.*—If your spouse who lives with you dies and the changes in your income or resources resulting from your spouse's death would decrease or eliminate your subsidy, we will defer your next redetermination for 1 year from the month following the month we are notified of the death of your spouse, unless we receive a report of another event specified in 418.3120(a) that would affect your eligibility for a subsidy.

■ 4. Amend § 412.3335 to revise paragraph (b) to read as follows:

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

[4] *See* 5 U.S.C. 553(d)(3).

§ 418.3335 What types of unearned income do we count?

* * * * *

(b) For claims filed before January 1, 2010, and redeterminations that are effective before January 1, 2010, we also count in-kind support and maintenance as unearned income. In-kind support and maintenance is any food and shelter given to you or that you receive because someone else pays for it.

§ 418.3345 [Removed]

■ 5. Remove § 418.3345.

■ 6. Revise § 418.3350 to read as follows:

§ 418.3350 What types of unearned income do we not count?

(a) For claims filed on or after January 1, 2010 and redeterminations that are effective on or after January 1, 2010, we do not count as income in-kind support and maintenance.

(b) While we must know the source and amount of all of your unearned income, we do not count all of it to determine your eligibility for the subsidy. We apply to your unearned income the exclusions in § 418.3350(c) in the order listed. However, we do not reduce your unearned income below zero, and we do not apply any unused unearned income exclusion to earned income except for the $20 per month exclusion described in § 416.1124(c)(12) of this chapter. For purposes of determining eligibility for a subsidy and whether you should receive a full or partial subsidy, we treat the $20 per month exclusion as a $240 per year exclusion.

(c) We do not count as income the unearned income described in § 416.1124(b) and (c) of this chapter, except for paragraph (c)(13).

(d) We do not count as income any dividends or interest earned on resources you or your spouse owns.

■ 7. Amend § 418.3405 to revise paragraph (a) to read as follows:

§ 418.3405 What types of resources do we count?

(a) We count liquid resources. Liquid resources are cash, financial accounts, and other financial instruments that can be converted to cash within 20 workdays, excluding certain non-workdays as explained in § 416.120(d) of this chapter. Examples of resources that are ordinarily liquid include: stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies (for claims filed before January 1, 2010, and redeterminations that are effective before January 1, 2010), financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit), retirement accounts (such as individual retirement accounts or 401(k) accounts), revocable trusts, funds in an irrevocable trust if the trust beneficiary can direct the use of the funds, and similar items. We will presume that these types of resources can be converted to cash within 20 workdays and are countable as resources for subsidy determinations. However, if you establish that a particular resource cannot be converted to cash within 20 workdays, we will not count it as a resource.

* * * * *

■ 8. Amend § 418.3425 to revise paragraph (f) to read as follows:

§ 418.3425 What resources do we exclude from counting?

* * * * *

(f) For claims filed on or after January 1, 2010, and redeterminations that are effective on or after January 1, 2010, life insurance owned by an individual (and spouse, if any).

* * * * *

[FR Doc. 2010–32848 Filed 12–28–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2010–0001; T.D. TTB–88; Re: Notice No. 103]

RIN 1513–AB31

Expansion of the Santa Maria Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision expands the Santa Maria Valley viticultural area in Santa Barbara and San Luis Obispo Counties, California, by 18,790 acres. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* January 28, 2011.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–453–2002.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;

- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Santa Maria Valley Expansion Petition

Background

On August 5, 1981, the Bureau of Alcohol, Tobacco, and Firearms (ATF), our predecessor agency, published T.D. ATF–89 in the **Federal Register** at 46 FR 39811 (August 5, 1981), establishing the Santa Maria Valley viticultural area (27 CFR 9.28) on 97,483 acres in southern San Luis Obispo and northern Santa Barbara counties, largely within the Central Coast viticultural area (27 CFR 9.75). A small portion of the existing Santa Maria Valley viticultural area lies outside of the Central Coast area's boundary within the Los Padres National Forest where no grape-growing takes place. In the Geographical Evidence section, T.D. ATF–89 stated that prevailing ocean winds blow west to east, into and through the Santa Maria Valley. The winds create a climate where air temperatures are cooler in summer and winter, but warmer in fall, than the surrounding areas.

In March 2006, Sara Schorske of Compliance Service of America, Inc., on behalf of a group of local winery and vineyard owners, submitted a petition proposing an expansion of the southern and western boundaries of the current Santa Maria Valley viticultural area. The petition presented evidence and documentation in recognition of the geographical name of the proposed southern expansion area and in support of the similarities of its climate, soils, terrain, and watershed with those of the original viticultural area. The petition also documented significant commercial viticulture to the south of the original southern boundary line. TTB returned the March 2006 petition to expand the Santa Maria Valley viticultural area with a letter urging the petitioner to delete the western expansion portion, about which sufficient evidence was not presented.

Ms. Schorske then submitted the current petition, which requests only a southern expansion (consisting of 18,790 acres) of the original Santa Maria Valley viticultural area. The expansion area lies in northern Santa Barbara County, according to the boundary description and USGS maps, and is entirely within the Central Coast viticultural area. The expansion area includes 9 vineyards, 255 acres of commercial viticulture, and 60 to 200 acres under viticultural development, according to the petition.

Name Evidence

The current petition explains that the original petition supporting the establishment of the Santa Maria Valley viticultural area in 1981 documented the "Santa Maria Valley" name for the geographical area. Hence, T.D. ATF–89, in establishing the Santa Maria Valley viticultural area, determined that the most appropriate name for the geographical area was Santa Maria Valley.

The current petition states that the southern expansion of the Santa Maria Valley viticultural area follows the watershed boundary line between the Santa Maria Valley to the north and the Los Alamos Valley to the south. The current petition relies on the Santa Maria River watershed for name recognition of the expansion area.

Boundary Evidence

The original southern boundary line of the Santa Maria Valley viticultural area follows Foxen Canyon Road and Clark Avenue, at Sisquoc, for 4.2 miles inside the southern perimeter of the Santa Maria River watershed, according to the current boundary description and USGS maps. On the south side of the Santa Maria Valley watershed, the creeks drain northward to lower elevations, through the valley, and into the Santa Maria River, as shown on USGS maps. Computer-generated watershed maps show that the expansion of the southern boundary line conforms to the Santa Maria River watershed, according to the petition.

The boundary line of the southern expansion of the Santa Maria Valley viticultural area, going clockwise, starts at the southeast corner of the current viticultural area boundary and travels in a straight line west-northwest, over the Solomon Hills to its intersection with U.S. Route 101, according to the boundary description and USGS maps. Following U.S. 101, the boundary line continues north to Clark Avenue in Orcutt, rejoining the original boundary line of the Santa Maria Valley viticultural area.

Distinguishing Features

Santa Maria Valley Viticultural Area as Established by T.D. ATF–89

TTB notes that in establishing the Santa Maria Valley viticultural area, T.D. ATF–89 cited terrain, soils, and climate as distinguishing features.

Terrain: According to T.D. ATF–89, the boundary line of the Santa Maria Valley viticultural area surrounds the Santa Maria Valley floor, adjacent canyons, and sloping terraces. Elevations vary from a low of 200 feet at the Santa Maria River to a high of 3,200 feet at Tepusquet Peak. As shown on the USGS Foxen Canyon map, a westward projection of the San Rafael Mountains, peaking at 1,801 feet in elevation, extends about 4 miles into the southeast portion of the original Santa Maria Valley viticultural area. According to USGS maps, the original southern boundary line varies from 600 to 1,000 feet in elevation. Vineyards within the original viticultural area were planted between elevations of 300 feet on the valley floor and 800 feet on the slopes of the rolling hillsides.

Soils and Climate: According to T.D. ATF–89, the soils of the Santa Maria Valley viticultural area are well drained and fertile, and range in texture from sandy loam to clay loam. The prevailing, cooling, marine-influenced ocean winds are also important to the viticultural area.

Current Petition to Expand the Santa Maria Valley Viticultural Area

Terrain: The petition states that the geography of the southern expansion of the Santa Maria Valley viticultural area is similar to that inside the original southern boundary line. The valley lies along an east-southeast axis, and is about 16 miles long within the existing viticultural area and the expansion area ("Locations of Weather Stations and Selected Vineyards and Wineries," map, undated). In the southern expansion area, gently rolling hills give way to a more rugged terrain of canyons and steep slopes, as shown on USGS maps. Elevations in the southern expansion area vary between around 440 feet near Sisquoc to 1,360 feet at the southeast corner of the original Santa Maria Valley viticultural area, and are similar to those in areas on or surrounding the Santa Maria Valley floor.

The petition includes the table below, which shows the elevations of commercial vineyards in the southern portion of the original Santa Maria Valley viticultural area and in the southern expansion area. Elevations of vineyards within the southern portion of the original Santa Maria Valley

viticultural area range from 600 to 950 feet; likewise, those of vineyards in the southern expansion area range from 600 to 930 feet.

Vineyard	Location	Approximate elevation in feet
Rancho Ontiveros	Within the AVA	650
Solomon Hills	Within the AVA	700
Good Child	Within the AVA	750–800
Riverbench	Within the AVA	950
Rancho Sisquoc	Within the AVA	600–750
Foxen	Within the AVA	720
Addamo Estate	Within the proposed expansion	760–840
Solomon Hills	Within the proposed expansion	640–840
Casa Torres	Within the proposed expansion	720–800
Le Bon Climate	Within the proposed expansion	600
Lucas Lewellan	Within the proposed expansion	700
Foxen	Within the proposed expansion	800–900
Rancho Real	Within the proposed expansion	650–930
Murphy	Within the proposed expansion	750–880

Climate: The petition explains that the Santa Maria Valley has a "maritime fringe" climate ("The Climate of Southern California," Harry P. Bailey, University of California Press, 1966). The maritime fringe climate derives from the Pacific Ocean, causing foggy and windy conditions in the Santa Maria Valley. In contrast, some other inland, high-elevation areas nearby have either less or no marine influence, according to the petition.

The petition states that during the summer growing season, the marine air moves onshore, passing through low-elevation passes in the Coast Range, inland to the Santa Maria Valley. (T.D. ATF–89 describes the Santa Maria Valley as a "natural funnel-shaped" valley.) Temperatures are consistent throughout the gentle west-to-east rise in elevations in the Santa Maria Valley. The petition states that the cooling wind and fog encounter little resistance in any direction until they meet the Sierra Madre Mountains on the north side of the valley and the Solomon Hills on the south side, where the valley terminates. The boundary of the southern expansion extends to the Solomon Hills, where the cooling wind and fog encounter resistance, according to the petition.

The petition includes a map that shows the broad, westerly opening between these mountains and hills and how they funnel cooling wind and fog in an east-southeast direction, into the valley. T.D. ATF–89 states that "* * * the prevailing winds from the ocean [cause] the valley to have a generally cooler summer, warmer fall, and cooler winter than surrounding areas."

The current petition provides data from two weather stations, one within the original Santa Maria Valley viticultural area and one within the expansion area. Both stations are nestled along foothills, slightly above the valley floor. A graph in the petition presents heat accumulation data recorded in 2004 at the two stations. The graph shows that growing season totals for 2004 in the original viticultural area and in the expansion area were both just below 3,000 growing degree days.

As a measurement of heat accumulation during the growing season, 1 growing degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth ("General Viticulture," Albert J. Winkler, University of California Press, 1975, pages 61–64).

Soils: According to the petition, the original Santa Maria Valley viticultural area consists of a wide variety of soils, without a single dominant type. The petition provides a table listing the soil map units in the original Santa Maria Valley viticultural area and in the expansion area. The table is divided into four general areas. Three areas are within the original Santa Maria Valley viticultural area: (1) Valley floor, (2) hills (the Solomon Hills), and (3) mountains (the foothills of the Sierra Madre Mountains, northeast of the Santa Maria River). The fourth is the southern expansion area.

As shown in the table, the soils are mainly sand, sandy loam, and loam on the valley floor, but are mixed sandy loam, clay loam, shaly loam, and silt loam on mountains. However, the soils in the expansion area are also found in the original Santa Maria Valley viticultural area. In both the expansion area and on hills in the original viticultural area, the soils are sand, sandy loam, clay loam, and shaly clay loam, but are mostly loam and shaly loam.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 103 regarding the proposed expansion of the Santa Maria Valley viticultural area in the **Federal Register** at 75 FR 9827 (March 4, 2010). In that notice, TTB invited comments by May 3, 2010, from all interested persons. We solicited comments from interested members of the public on whether we should expand the Santa Maria Valley viticultural area as described above. We expressed particular interest in receiving comments concerning the similarity of the proposed expansion area to the current Santa Maria Valley viticultural area, the geographical features that distinguish the viticultural features of the proposed expansion area from the area beyond it to the south, and the use of the Santa Maria River watershed to justify the proposed expansion of the southern boundary line.

We received two comments in response to the notice, both supporting the expansion of the Santa Maria Valley viticultural area. An agricultural property appraiser supports the expansion and states the boundaries are reasonably defined by geographic features. A Farm Advisor employed with the Cooperative Extension-San Luis Obispo County, University of California, Agriculture and Natural Resources, supports the expansion based on similarities in temperature conditions within the existing Santa Maria Valley viticultural area and the expansion area. The Advisor included temperature data, an aerial picture of the area, and a 2008 and 2009 overview of the average growing degree days for

the Santa Maria Valley viticultural area that includes the expansion area.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the expansion of the Santa Maria Valley viticultural area. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we expand the Santa Maria Valley American viticultural area in Santa Barbara and San Luis Obispo Counties, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

The expansion of the Santa Maria Valley viticultural area will not affect currently approved wine labels. The approval of this expansion may allow additional vintners to use "Santa Maria Valley" as an appellation of origin on their wine labels. Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.28 is revised to read as follows:

§ 9.28 Santa Maria Valley.

(a) *Name.* The name of the viticultural area described in this section is "Santa Maria Valley". For purposes of part 4 of this chapter, "Santa Maria Valley" is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey maps used to determine the boundary of the Santa Maria Valley viticultural area are titled:

(1) Orcutt Quadrangle, California-Santa Barbara Co., 7.5 minute series, 1959, photorevised 1967 and 1974, photoinspected 1978;

(2) Santa Maria Quadrangle, California, 7.5 minute series, 1959, photorevised 1982;

(3) "San Luis Obispo", N.I. 10–3, series V 502, scale 1: 250,000;

(4) "Santa Maria", N.I. 10–6, 9, series V 502, scale 1: 250,000;

(5) Foxen Canyon Quadrangle, California-Santa Barbara Co., 7.5-minute series, 1995; and

(6) Sisquoc Quadrangle, California-Santa Barbara Co., 7.5 minute series, 1959, photoinspected 1974.

(c) *Boundary.* The Santa Maria Valley viticultural area is located in Santa Barbara and San Luis Obispo Counties, California. The boundary of the Santa Maria Valley viticultural area is as follows:

(1) Begin on the Orcutt quadrangle map at the intersection of U.S. Route 101 and Clark Avenue, section 18 north boundary line, T9N/R33W, then proceed generally north along U.S. Route 101 approximately 10 miles onto the Santa Maria quadrangle map to U.S. Route 101's intersection with State Route 166 (east), T10N/R34W; then

(2) Proceed generally northeast along State Route 166 (east) onto the San Luis Obispo N.I. 10–3 map to State Route 166's intersection with the section line southwest of Chimney Canyon, T11N/R32W; then

(3) Proceed south in a straight line onto the Santa Maria N.I. 10–6 map to the 3,016-foot summit of Los Coches Mountain; then

(4) Proceed southeast in a straight line onto the Foxen Canyon quadrangle map to the 2,822-foot summit of Bone Mountain, T9N/R32W; then

(5) Proceed south-southwest in a straight line approximately 6 miles to the line's intersection with secondary highways Foxen Canyon Road and Alisos Canyon Road and a marked 1,116-foot elevation point, T8N/R32W; then

(6) Proceed west-northwest in a straight line approximately 6 miles onto the Sisquoc quadrangle map to the southeast corner of section 4, T8N/R32W; then

(7) Proceed west-northwest in a straight line approximately 6.2 miles, crossing over the Solomon Hills, to the line's intersection with U.S. Route 101 and a private, unnamed light-duty road that meanders east into the Cat Canyon Oil Field, T9N/R33W; then

(8) Proceed north 3.75 miles along U.S. Route 101 onto the Orcutt quadrangle map and return to the point of beginning.

Signed: August 24, 2010.

John J. Manfreda,

Administrator.

Approved: September 21, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010–32873 Filed 12–28–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

28 CFR Part 72

[Docket No. OAG 117; AG Order No. 3239–2010]

RIN 1105–AB22

Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Justice is finalizing an interim rule specifying that the requirements of the Sex Offender Registration and Notification Act, title I of Public Law 109–248, apply to all sex offenders, including sex offenders convicted of the offense for which registration is required before the enactment of that Act.

DATES: *Effective Date:* This rule is effective January 28, 2011.

FOR FURTHER INFORMATION CONTACT: Paul R. Almanza, Deputy Chief, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice, Washington, DC, 202–514–5780.

SUPPLEMENTARY INFORMATION: The Department of Justice by this publication is finalizing an interim rule regarding the scope of application of the Sex Offender Registration and Notification Act (SORNA), title I of Public Law 109–248 (codified at 42 U.S.C. 16901 *et seq.*). The interim rule, *Applicability of the Sex Offender Registration and Notification Act,* was published on February 28, 2007, at 72 FR 8894. The interim rule solicited public comments and the comment period ended on April 30, 2007.

The preamble to the interim rule explained that SORNA establishes national standards for sex offender registration and notification. The preamble further explained that SORNA's requirements are of two sorts. First, SORNA directly imposes registration obligations on sex offenders as a matter of federal law and provides for federal enforcement of these obligations under circumstances supporting federal jurisdiction. These federal registration obligations on sex offenders have been in force since the enactment of SORNA. Second, SORNA establishes minimum national standards for non-federal jurisdictions to incorporate in their sex offender registration and notification programs. The relevant "jurisdictions" as defined by SORNA are the 50 States, the District of Columbia, the principal territories, and Indian tribes to the extent provided in 42 U.S.C. 16927. *See* 42 U.S.C. 16911(10). Jurisdictions that do not substantially implement SORNA's requirements in their programs within the time specified by SORNA are subject to a 10% reduction of certain justice assistance funding. SORNA affords jurisdictions a three-year period for substantial implementation of the SORNA standards, subject to extension for up to an additional two years in the Attorney General's discretion. *See* 42 U.S.C. 16924–25.

The preamble to the interim rule took the position that SORNA applies of its own force to all sex offenders regardless of when they were convicted of their sex offenses. It also stated that rulemaking was immediately necessary to "foreclos[e] any dispute as to whether SORNA is applicable where the conviction for the predicate sex offense occurred prior to the enactment of SORNA." 72 FR at 8896. The rule noted that this issue was "of fundamental importance to the initial operation of SORNA, and to its practical scope for many years, since it determines the applicability of SORNA's requirements to virtually the entire existing sex offender population." *Id.* In light of these considerations, the Attorney General exercised his rulemaking authority under SORNA, *see* 42 U.S.C. 16912(b), 16913(d); 28 CFR 72.1, to specify that "[t]he requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act." 28 CFR 72.3; *see* 72 FR at 8896.

In issuing the interim rule, the Attorney General determined that there was good cause for receiving public comment after, rather than before, the rule's initial publication and for dispensing with the normal 30-day delay in effectiveness because of the urgency of eliminating any possible uncertainty regarding SORNA's applicability to sex offenders whose convictions predate SORNA's enactment. *See* 72 FR at 8896–97. Accordingly, the Attorney General issued the rule as an interim rule with immediate effectiveness. *See id.*

Following the publication of the interim rule, the Attorney General published proposed guidelines to provide guidance and assistance to the states and other jurisdictions in incorporating the SORNA requirements into their sex offender registration and notification programs. *See* 72 FR 30209 (May 30, 2007). The proposed guidelines solicited public comment and the comment period ended on August 1, 2007. Following consideration of the comments received, the Attorney General issued the final *National Guidelines for Sex Offender Registration and Notification* (hereafter, the "SORNA Guidelines" or "Guidelines") on July 2, 2008, appearing at 73 FR 38030. The Guidelines, like the interim rule, state that SORNA applies to all sex offenders regardless of when they were convicted, and they provide guidance to jurisdictions regarding the registration of sex offenders whose convictions predate the enactment of SORNA. *See* 73 FR at 38031, 38035–36, 38046–47, 38063–64.

In *United States* v. *Utesch,* 596 F.3d 302, 310–11 (6th Cir. 2010), the United States Court of Appeals for the Sixth Circuit held that the SORNA Guidelines are, independently of the interim rule, a valid final rule providing that SORNA applies to all sex offenders, including those whose convictions predate SORNA. This rulemaking reflects no disagreement with that conclusion but rather aims to eliminate any possible uncertainty or dispute concerning the scope of SORNA's application by finalizing the interim rule. This publication does not reflect agreement with the conclusions of an earlier decision of the Sixth Circuit holding that the interim rule was invalid at the time of its publication and that SORNA does not apply retroactively of its own force. *See United States* v. *Cain,* 583 F.3d 408, 413–24 (6th Cir. 2009).

Summary of Comments

The public comments on the interim rule were similar to comments received on the portions of the proposed SORNA Guidelines addressing SORNA's application to sex offenders with convictions predating SORNA's enactment. Accordingly, as discussed below, the preamble to the final SORNA Guidelines, *see* 73 FR at 38031, 38035–36, 38043, and various features of the Guidelines themselves, address the concerns raised by the comments on the interim rule.

Many of the commenters on the interim rule assumed that the Attorney General made a discretionary decision to apply SORNA to sex offenders with pre-SORNA convictions and argued in effect that the Attorney General should reverse the decision based on their policy objections. The Department of Justice does not agree that the criticisms raised in these comments are well-founded. By authorizing the Attorney General "to specify the applicability of the requirements of [SORNA] to sex offenders convicted before the enactment of [SORNA]," 42 U.S.C. 16913(d), Congress at the very least placed it within the Attorney General's discretion to apply SORNA's requirements to sex offenders with pre-SORNA convictions if he determines (as he has) that the public benefits of doing so outweigh any adverse effects. The preamble to the interim rule, 72 FR at 8895–97, and the remainder of this summary, explain the considerations justifying the Attorney General's conclusion on this point. Accordingly, the Attorney General's issuance and finalization of the interim rule have a

sound legal basis, regardless of whether (i) SORNA's requirements apply of their own force to sex offenders with pre-SORNA convictions, and the interim rule merely confirmed that fact, or (ii) the applicability of SORNA's requirements to sex offenders with pre-SORNA convictions depends on rulemaking by the Attorney General.

Misunderstandings of SORNA

Some of the comments on the interim rule reflected misunderstandings of SORNA's requirements. Many of these comments included assertions or assumptions that SORNA adopts a one-size-fits-all approach that treats all persons convicted of sexual offenses in the same way. However, SORNA's registration and notification requirements apply only to persons convicted of "sex offense[s]"—a defined term that does not include all crimes of a sexual nature. *See* 42 U.S.C. 16911(5)–(8); 73 FR at 38037, 38051–52. Within the class of "sex offender[s]" required to register under SORNA because of their conviction for "sex offense[s]," SORNA distinguishes three tiers of offenders based on the nature and seriousness of the predicate sex offense and the offender's history of recidivism. Offenders in different tiers are treated differently under SORNA's standards in relation to length of registration, frequency of required in-person appearances to verify registration information, and public notification. *See* 42 U.S.C. 16911(1)–(4), 16915–16, 16918(c)(1). Another common misconception in the comments was that SORNA restricts where sex offenders may live. However, SORNA is concerned with obtaining and disseminating information about sex offenders and does not prescribe limitations on sex offenders' places of residence, locations, or activities. *See* 42 U.S.C. 16913–21; 73 FR at 38032.

Some of the public comments reflected misconceptions about SORNA's provisions relating to juvenile sex offenders, stating or assuming that there is little or no difference between SORNA's treatment of adult and juvenile offenders. However, SORNA requires registration much more narrowly on the basis of juvenile delinquency adjudications than on the basis of adult convictions. Juvenile delinquency adjudications count as "convictions" that trigger SORNA's requirements only if the juvenile is at least 14 years old at the time of the offense and the offense is comparable to or more severe than aggravated sexual abuse as described in 18 U.S.C. 2241 (or an attempt or conspiracy to commit such an offense). *See* 42 U.S.C. 16911(8); 73 FR at 38030, 38032, 38040–41, 38050.

Hence, SORNA's registration requirements based on juvenile delinquency adjudications are limited to cases involving the commission of particularly serious sex offenses by juveniles who were at least 14 years old at the time of the offense. In addition, even for juveniles in this category, SORNA permits the reduction of their registration periods from life to 25 years if certain conditions are satisfied, a reduction that is not available to sex offenders with adult convictions for such crimes. *See* 42 U.S.C. 16915(b)(2)(B), (3)(B).

SORNA's Effect on Sex Offenders

Some of the comments received criticized SORNA as lacking valid policy support or as being counterproductive. Some commenters raised such criticisms in relation to SORNA's effects on covered sex offenders generally, while other commenters focused their criticisms on SORNA's application to juvenile sex offenders. The commenters often expressed particular concerns about the adverse effects of registration and notification on sex offenders and their families in such areas as housing, employment, personal security, education, and social relations.

In raising these concerns, some commenters may have been under an exaggerated impression of what SORNA's application to sex offenders with pre-SORNA convictions entails. The consequences are not boundless or indiscriminate. SORNA reserves its requirement of lifetime registration for the most serious category of sex offenders ("tier III"), and even in this category the registration period may be reduced to 25 years in certain circumstances if the registration requirement is based on a juvenile delinquency adjudication. The registration period for tier II offenders is 25 years, and the registration period for tier I offenders is 15 years, which may be reduced to 10 years in certain circumstances. *See* 42 U.S.C. 16915. The registration period begins to run when a sex offender is released from imprisonment for the predicate sex offense, or at the time of sentencing in connection with a nonincarcerative sentence. *See* 73 FR at 38068. Hence, for example, if a person was released from imprisonment in 1980 for a sex offense that places him in tier II, his SORNA registration period based on that offense ended in 2005—whether or not he was ever actually registered for the offense—and he is subject to no present registration requirement based on SORNA, absent conviction for other sex offenses. This limits the potential impact of SORNA's applicability to sex offenders with pre-SORNA convictions. *See* 73 FR at 38036, 38046–47, 38068–69 (discussing limits on duration of registration and other practical limitations on SORNA's effect on sex offenders with pre-SORNA convictions).

Turning to the underlying substantive issues, Congress's enactment of SORNA reflects a general legislative judgment that the public safety benefits of SORNA's requirements outweigh any adverse effects. The effects of SORNA's requirements on sex offenders, and the public safety concerns sex offenders present, are similar, whether a sex offender's conviction occurred before or after SORNA's enactment. Accordingly, the interests opposing and supporting registration—any adverse effect or burden of SORNA's requirements on sex offenders weighed against the public safety interests furthered by those requirements—are much the same whether the class of sex offenders with pre-SORNA convictions or the class of sex offenders with post-SORNA convictions is considered. *See* 72 FR at 8896–97 (noting frustration of SORNA's public safety objectives if sex offenders with pre-SORNA convictions were exempt from SORNA's requirements); 73 FR at 38035–36 (noting similarity of effects on sex offenders and public safety interests regardless of when the predicate sex offense convictions occurred). Hence, the Attorney General was and is justified in concluding that the balance comes out the same for the two classes and, accordingly, in exercising his authority to "specify the applicability of the requirements of [SORNA] to sex offenders convicted before the enactment" of SORNA, 42 U.S.C. 16913(d), to provide that SORNA applies to sex offenders with pre-SORNA convictions. 28 CFR 72.3.

Some commenters argued that the application of SORNA to sex offenders with pre-SORNA convictions would violate the Constitution's prohibition of ex post facto laws or other provisions of the Constitution. However, the SORNA requirements are non-punitive regulatory measures adopted for public safety purposes, and accordingly do not implicate the Constitution's prohibition of ex post facto laws. *See* 42 U.S.C. 16901; 72 FR at 8896; 73 FR at 38036, 38044–46. The comments received identified no persuasive distinction for ex post facto purposes between the SORNA requirements and the sex offender registration and notification measures upheld by the Supreme Court against ex post facto challenge in *Smith* v. *Doe,* 538 U.S. 84 (2003), and also did

not identify any persuasive reason to believe that either SORNA's requirements or their application to sex offenders with pre-SORNA convictions violates any other provision of the Constitution. This was so regardless of whether the general class of sex offenders or the limited class of juvenile delinquents qualifying as covered sex offenders under SORNA is considered.

Some commenters argued that applying SORNA's requirements to sex offenders with pre-SORNA convictions (or with pre-SORNA juvenile adjudications counting as "convictions" for SORNA purposes) would be unfair because the applicability of those requirements could not have been anticipated at the time of the offender's conviction for the predicate sex offense. However, fairness does not require that, when an offender's case is adjudicated, it must be possible to anticipate future regulatory measures that may be adopted in relation to persons like him to protect public safety. *See* 73 FR at 38036. The government may not yet have developed effective regulatory measures to address the public safety concerns presented by certain types of offenders at the time of their offenses or convictions. That does not constitute a commitment to those offenders by the government that it will not develop such measures and apply them to the offenders at a later time, *cf., e.g., Smith* v. *Doe,* 538 U.S. at 89–91 (registration requirements applied to sex offenders with convictions predating enactment of the registration law), and does not constitute a commitment to those offenders by the government that it will refrain from later strengthening or improving existing regulatory measures in light of lessons learned from experience. Moreover, on the other side of the balance, fairness is also due to persons who may be victimized by sex offenses that could be prevented by applying SORNA's requirements to sex offenders with pre-SORNA convictions. S*ee* 73 FR at 38044–45 (discussing role of registration and notification measures in solving and preventing sex offenses). If such crimes occur, the harm to the victims is no less because the offender's previous sex offense conviction or convictions occurred before SORNA's enactment rather than after.

The conclusion does not differ when the treatment of juvenile delinquent sex offenders under SORNA is considered specifically. Both for sex offenders with adult convictions and for those adjudicated delinquent, the effects of registration requirements on the offenders and the public safety concerns the offenders present are similar regardless of whether their case dispositions occurred before or after the enactment of SORNA. Hence, as with adult sex offenders, the Attorney General was and is justified in concluding that the balance of interests does not differ materially depending on the timing of the adjudication in relation to SORNA's enactment and that SORNA's requirements should apply to juvenile delinquent sex offenders with pre-SORNA adjudications as well as to those with post-SORNA adjudications.

In relation to juvenile delinquent sex offenders, the operation of registration systems may entail a relaxation of confidentiality requirements that might otherwise apply in juvenile proceedings, but that is the case whether the delinquency adjudications occur before or after SORNA's enactment. The confidentiality of juvenile proceedings is generally a matter of legislative discretion. With respect to juveniles at least 14 years old adjudicated delinquent for particularly serious sex offenses, Congress has made a policy judgment that the public safety interests warrant a departure from strict juvenile confidentiality policies. *See* 42 U.S.C. 16911(8); H.R. Rep. No. 218, 109th Cong., 1st Sess. Pt. 1, at 25 (2005) ("While the Committee recognizes that States typically protect the identity of a juvenile who commits criminal acts, in the case of sexual offenses, the balance needs to change; no longer should the rights of the juvenile offender outweigh the rights of the community and victims to be free from additional sexual crimes.").

Thus, as reflected in the interim rule and this finalizing rulemaking, it is the Attorney General's view that applying SORNA's requirements to sex offenders with pre-SORNA convictions, including sex offenders required to register on the basis of juvenile delinquency adjudications, appropriately effectuates Congress's purposes in enacting SORNA. *See* 72 FR at 8895–97; 73 FR at 38031–32, 38035–36, 38038, 38040.

SORNA's Effects on Jurisdictions

The scope of SORNA's application to sex offenders has implications for jurisdictions because the states and other covered jurisdictions are generally expected to incorporate offenders to whom SORNA applies into their sex offender registration programs. *See* 42 U.S.C. 16911(9), 16912(a), 16924–25; 72 FR at 8895; 73 FR at 38048. In light of this consequence, some of the public comments on the interim rule objected that jurisdictions would have difficulty in identifying, locating, notifying, and registering sex offenders required to register under SORNA who were convicted many years ago and who have since merged into the general population. These concerns about potential burdens on jurisdictions, however, were considered in the development of the SORNA Guidelines and are addressed through various features of the Guidelines.

The Guidelines recognize that it may not be feasible for a jurisdiction to identify and register all sex offenders with pre-SORNA convictions who are required to register under the SORNA standards. The Guidelines accordingly provide that jurisdictions will be considered to have substantially implemented the SORNA requirements if they register such offenders who remain in the justice system as prisoners, supervisees, or registrants, and such offenders who have passed out of the system but later re-enter it because of a subsequent criminal conviction. *See* 73 FR at 38046, 38063–64.

As the Guidelines note, sex offenders in these classes are within the cognizance of the jurisdiction in any event and the jurisdiction will often have independent reasons to review their criminal histories for penal, correctional, or registration/notification purposes. *See* 73 FR at 38046. In addition, the Guidelines provide that, in attempting to identify individuals who may be required to register under SORNA, jurisdictions may rely on their normal methods and standards in searching criminal histories, and need not undertake extraordinary efforts to identify individuals with old sex offense convictions that may be difficult to find. The Guidelines also provide guidance to jurisdictions about notifying such sex offenders concerning their registration obligations under SORNA and incorporating such offenders into their registration systems. *See* 73 FR at 38043, 38063–64.

In sum, the comments received provide no persuasive reason to change the rule.

However, this final rule makes one clarifying change in the interim rule in light of the Supreme Court's decision in *Carr* v. *United States,* 560 U.S. ___, 2010 WL 2160783 (2010). *Carr* held that sex offenders cannot be criminally liable under 18 U.S.C. 2250 for failing to register as required by SORNA where federal jurisdiction is premised on interstate travel by the offender occurring before the enactment of SORNA. Example 2 in 28 CFR 72.3, which is part of the regulations added by the interim rule, describes a situation involving potential liability under 18 U.S.C. 2250 for a sex offender with a pre-SORNA sex offense conviction based on interstate travel. While the

example is not specific about the timing of the interstate travel in relation to the enactment of SORNA, it could be understood as referring to a situation in which the travel occurred before the enactment of SORNA. Accordingly, this final rule makes minor changes in the language of Example 2 so as to avoid any arguable inconsistency with the Supreme Court's holding in *Carr* regarding the scope of criminal liability under 18 U.S.C. 2250.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the purposes of that Act because the regulation concerns the application of the requirements of the Sex Offender Registration and Notification Act to certain offenders.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. There has been substantial consultation with State officials regarding the interpretation and implementation of the Sex Offender Registration and Notification Act. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. By way of explanation, this rule finalizes an interim rule concerning the applicability of SORNA's registration requirements to sex offenders, including those whose sex offense convictions occurred before SORNA's enactment. The rule facilitates federal prosecution of sex offenders in the affected classes who fail to register as required, see 18 U.S.C. 2250, but it does not directly require expenditures by state, local, or tribal governments. The interim rule was issued prior to the publication by the Attorney General of the SORNA Guidelines, appearing at 73 FR 38029 et seq., which determine what state, local, and tribal jurisdictions must do to achieve substantial implementation of the SORNA standards in their registration programs. The SORNA Guidelines include instructions to jurisdictions concerning the classes of sex offenders with pre-existing convictions whom the jurisdictions must register, and the costs of doing so will not be affected or increased by the finalization of the interim rule. Based on the known costs in jurisdictions that have implemented SORNA to date, it is not anticipated that the cost of implementing this aspect of the SORNA standards will exceed $100 million annually.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

This rule comports with Executive Order 13175. The Department of Justice has carried out previous tribal consultations regarding actions under SORNA affecting Indian tribes. The Department engaged in a voluntary consultation on this rule with tribal officials in Spokane, Washington, on October 4, 2010.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 72

Crime, Information, Law enforcement, Prisons, Prisoners, Records, Probation and Parole.

■ Accordingly, for the reasons stated in the interim rule adding 28 CFR part 72, which was published at 72 FR 8894 on February 28, 2007, and for the reasons stated in the supplementary information to this rule, the interim rule is adopted as a final rule with one change as follows:

PART 72—SEX OFFENDER REGISTRATION AND NOTIFICATION

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

Authority: Pub. L. 109–248, 120 Stat. 587.

■ 2. In § 72.3, Example 2 is revised to read as follows:

§ 72.3 Applicability of the Sex Offender Registration and Notification Act.

* * * * *

Example 2. A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required but relocates to another state in 2009 and fails to register in the new state of residence. The sex offender has violated the requirement under the Sex Offender Registration and Notification Act to register in any jurisdiction in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.

Dated: December 21, 2010.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2010–32719 Filed 12–28–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[Docket No. BOP–1118–F]

RIN 1120–AB18

Inmate Discipline Program/Special Housing Units: Subpart Revision and Clarification

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Prisons (Bureau) is correcting a final rule that appeared in the **Federal Register** of December 8, 2010 (75 FR 76263). The document issued a final rule amending

the Bureau's Inmate Discipline Program and Special Housing Units (SHU) regulations. The Bureau issues this correction document in order to correct typographical and numbering errors. No substantive changes are being made to the final rule document.

DATES: This rule is effective on March 1, 2011.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

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

SUPPLEMENTARY INFORMATION: The Bureau corrects its Inmate Discipline and Special Housing Units (SHU) regulations (28 CFR part 541, subpart A and subpart B), as published in the **Federal Register** of December 8, 2010 (75 FR 76263), FR Doc. 2010–30525, as follows:

1. On page 76266, in the second column, second full paragraph beginning "Code 331", the reference to "§ 541.03" is corrected to read "§ 541.3".

§ 541.3 [Corrected]

2. On page 76267, the title of Table 1, "Table 1—Prohibited Acts and Available Sanctions Greatest Severity Level Prohibited Acts" is corrected to read "Table 1—Prohibited Acts and Available Sanctions".

3. On page 76267, in Table 1, between the line after the title of Table 1 and before the line beginning with "100", insert a new line with a subheading to read as follows: "Greatest Severity Level Prohibited Acts".

§ 541.7 [Corrected]

4. On page 76272, in the first column, in § 541.7(a)(4), "§ 541.04" is corrected to read "§ 541.4".

5. On page 76272, in the first column, in § 541(g), "§ 541.08" is corrected to read "§ 541.8".

§ 541.23 [Corrected]

12. On page 76273, in the third column, in § 541.23(c)(3), "You requested, or staff determined you need, administrative detention status for your own protection." Is corrected to read "You requested, or staff determined you need, administrative detention status for your own protection; or".

Harley G. Lappin,

Director, Federal Bureau of Prisons.

[FR Doc. 2010–32706 Filed 12–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1108]

RIN 1625–AA00

Safety Zone; New Year's Celebration for the City of San Francisco, Fireworks Display, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in support of the New Year's Eve Celebration for the City of San Francisco Fireworks Display. The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics, and will extend 1,000 feet from the nearest point of the barge during the fireworks display. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or her designated representative.

DATES: This rule is effective from 11 a.m. on December 31, 2010 until 12:30 a.m. on January 1, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1108 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1108 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Allison Natcher at 415–399–7442, or e-mail *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, as it would be impracticable to do so because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

The City of San Francisco will sponsor the New Year's Eve Celebration for the City of San Francisco Fireworks Display from 11:45 p.m. on December 31, 2010 until 12:30 a.m. on January 1, 2011, on the navigable waters of San Francisco Bay located 1,000 feet from the San Francisco Ferry Building in San Francisco, CA. The fireworks display is for entertainment purposes. From 11 a.m. until 11 p.m. on December 31, 2010, pyrotechnics will be loaded onto a barge at Pier 50 near position 37°46′29.5″ N, 122°22′57.4″ W. From 11 p.m. until 11:20 p.m. the loaded barge will be transiting from Pier 50 to the launch site located at position 37°47′42.60″ N, 122°23′19.10″ W. The Coast Guard has granted the event sponsor a marine event permit for the fireworks displays. We believe that a safety zone is necessary to protect spectators, vessels, and other property from the hazards associated with pyrotechnics on the fireworks barges.

Discussion of Rule

The Coast Guard is establishing a safety zone to keep spectators and vessels a safe distance away from the fireworks barges to ensure the safety of participants, spectators, and transiting vessels during the fireworks display.

The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Pier 50 to position 37°47′42.60″ N, 122°23′19.10″ W. The fireworks display will occur from 11:45 p.m. on December 31, 2010 until 12:30 a.m. on January 1, 2011, during which the safety zone will extend 1,000 feet from the nearest point of the barge at position 37°47′42.60″ N, 122°23′19.10″ W. At 12:30 a.m. on January 1, 2011 the safety zone will terminate.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the fireworks sites while the fireworks are set up, and until the conclusion of the scheduled displays. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant. The entities most likely to be affected are pleasure craft engaged in recreational activities. In addition, the rule will only restrict access for a limited time. Finally, the Public Broadcast Notice to Mariners will notify the users of local waterway to ensure that the safety zone will result in minimum impact.

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.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–385 to read as follows:

§ 165.T11–385 Safety Zone; New Year's Celebration for the City of San Francisco Fireworks Display, San Francisco, CA.

(a) *Location.*

(1) During the loading of the fireworks, on December 31, 2010 at 11 a.m. at Pier 50 in San Francisco, CA, and until the start of the fireworks displays at 11:45 p.m. on December 31, 2010 the temporary safety zone will extend 100 feet from the loaded pyrotechnics barge beginning near position 37°46′29.5″ N, 122°22′57.4″ W, during transit and arrival to position 37°47′42.60″ N, 122°23′19.10″ W.

(2) From 11:45 p.m. on December 31, 2010 until 12:30 a.m. on January 1, 2011, the temporary safety zone will increase in size to 1,000 feet at position 37°47′42.60″ N, 122°23′19.10″ W. At 12:30 a.m. on January 1, 2011, this safety zone will terminate.

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

(c) *Regulations.*

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

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

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

(d) *Enforcement period.* This section will be enforced from 11 a.m. on December 31, 2010 until 12:30 a.m. on January 1, 2011.

Dated: December 16, 2010.

C.L. Stowe,

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

[FR Doc. 2010–32802 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1087]

RIN 1625–AA87

Security Zone, Michoud Slip Position 30°0′34.2″ N, 89°55′40.7″ W to Position 30°0′29.5″ N, 89°55′52.6″ W

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Captain of the Port of New Orleans, under the authority of the Magnuson Act, 33 CFR sections 165.30 and 165.33, has established a security zone for the Michoud Slip encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W to position 30°0′29.5″ N, 89°55′52.6″ W across the mouth of the slip. Vessels will not be allowed to enter this security zone without the permission of the Captain of the Port, New Orleans. This security zone is necessary to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

DATES: This rule is effective from January 1, 2011, through December 31, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1087 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1087 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Commander (LCDR) Eva VanCamp, Sector New Orleans, Coast Guard; telephone 504–365–2392, e-mail *Eva.VanCamp@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to public interest to delay the rule. Immediate action is necessary to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature after a current temporary final rule (75 FR 65236, October 22, 2010) providing a security zone for this area expires.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This security zone is needed to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature. Delaying the effective date of this temporary final rule is impracticable and contrary to public interest.

Basis and Purpose

An investigation associated with the Deepwater Horizon incident is currently taking place in the vicinity of Michoud Slip. As noted above, a security zone is currently established (75 FR 65236, October 22, 2010). It encompasses the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W to position 30°0′29.5″ N, 89°55′52.6″ W across the mouth of the slip. Vessels will not be allowed to enter this security zone without the permission of the Captain of the Port, New Orleans. This security zone is necessary to protect the Deepwater Horizon blowout preventer and adjacent piers and infrastructure from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

Discussion of Rule

A security zone is an area of land, water, or land and water established for a designated period of time to prevent damage or injury to a specified vessel, waterfront facility or to safeguard ports, harbors, territories, or waters of the United States. This security zone encompasses the Michoud Slip and adjacent piers where the Deepwater Horizon blowout preventer is located and is intended to protect and safeguard the blowout preventer from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. This security zone is necessary until all investigations related to the Deepwater Horizon are complete and the blowout preventer is no longer needed for matters relating to the Deepwater Horizon.

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.

Because of its location, the impacts of this security zone on routine navigation are expected to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels, intending to transit the Michoud Slip, encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W to position 30°0′29.5″ N, 89°55′52.6″ W across the mouth of the slip. This security zone will not have significant impact on a substantial number of small entities because of its location. If you are a small business entity and are significantly affected by this regulation please contact Lieutenant Commander (LCDR) Eva VanCamp, Sector New Orleans, at 504–365–2392, or e-mail *Eva.VanCamp@uscg.mil*.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

An environmental analysis checklist and a categorical exclusion determination will be uploaded to the docket as indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.06–1, 6.05–6 AND 160.5; Pub. L. 107–295, 116 STAT. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–1087 is added to read as follows:

§ 165.T08–1087 Security Zone, Michoud Slip.

(a) *Location.* The following area is a security zone: Michoud Slip, encompassing the entire slip from position 30°0′34.2″ N, 89°55′40.7″ W to position 30°0′29.5″ N, 89°55′52.6″ W across the mouth of the slip.

(b) *Effective period.* This section is effective from January 1, 2011, through December 31, 2011.

(c) *Regulations.* (1) In accordance with the general regulation in 33 CFR part 165, subpart D, vessels are prohibited from entering or transiting the security zone created by this section.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at telephone (504) 365–2543.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

Dated: December 8, 2010.

E.M. Stanton,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2010–32720 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0811–201070; FRL–9244–4]

Approval and Promulgation of Implementation Plans; Mississippi: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), to EPA on September 14, 2010, for parallel processing. MDEQ submitted the final version of this SIP revision on December 9, 2010. The SIP revision incorporates updates to MDEQ's air quality regulations impacting the regulation of greenhouse gas (GHG) under Mississippi's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Mississippi's PSD permitting requirements for their GHG emissions. The change is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels otherwise

provided under the Clean Air Act (CAA or Act), which would overwhelm Mississippi's permitting resources. EPA is approving Mississippi's December 9, 2010, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments received on EPA's November 5, 2010, proposed approval of Mississippi's September 14, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective January 2, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0811. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Mississippi SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; *e-mail address: abrams.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the background for today's final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Mississippi SIP.[1] Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,[2] the "Johnson Memo Reconsideration," [3] the "Light-Duty Vehicle Rule," [4] and the "Tailoring Rule." [5] Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

On September 14, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, MDEQ submitted a draft revision to EPA for approval into the Mississippi SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Mississippi's PSD permitting requirements for GHG emissions. Subsequently, on November 5, 2010, EPA published a proposed rulemaking to approve a portion of Mississippi's September 14, 2010, SIP revision under parallel processing. 75 FR 68259. Specifically, Mississippi's September 14, 2010, draft SIP revision incorporates by reference the Tailoring Rule provisions at 40 CFR 52.21 (as amended June 3, 2010, and effective August 2, 2010), into the Mississippi SIP (APC–S–5—*Regulations for the Prevention of Significant Deterioration*) to address the thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 5, 2010, **Federal Register** notice.

EPA's November 5, 2010, proposed approval was contingent upon Mississippi providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 5, 2010, proposed rulemaking. 75 FR 68259. Mississippi provided its final SIP revision on December 9, 2010. There was a minor change to correct an error for a citation noted in Mississippi's September 14, 2010, draft SIP revision. Specifically, in providing the citation for the NSR $PM_{2.5}$ Implementation Rule, Mississippi provided 73 FR 38349 in its September 14, 2010, draft SIP revision under APC–S–5, Section 2–7. In Mississippi's December 9, 2010, SIP revision, the State corrects this citation to read 73 FR 28321 instead of 73 FR 38349. Besides the correction of the citation, there were no differences between Mississippi's September 14, 2010, draft SIP revision, and the final SIP revision which was provided on December 9, 2010.

Mississippi's December 9, 2010, SIP revision also incorporates two administrative changes to their PSD regulations (Air Pollution Control, Section 5 (APC–S–5)—*Regulations for the Prevention of Significant Deterioration*). These changes relate to Mississippi's pre-existing exclusion of certain provisions of the federal PSD regulations from its SIP, specifically, provisions pertaining to the "reasonable possibility" standard,[6] "clean units," and

[1] On December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 77698. In a companion rulemaking, EPA proposed a federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because Mississippi's SIP already authorizes Mississippi to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Mississippi is not subject to the proposed SIP Call or FIP.

[2] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[3] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

[4] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[5] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

[6] On July 10, 2006 (71 FR 38773), EPA approved Mississippi's incorporation by reference of the 2002 NSR Reform Rules into the Mississippi SIP. The SIP-approved rule excludes certain provisions of the federal rules that were not incorporated by reference. Among the excluded provisions are those set forth at 40 CFR 52.21(r)(6) pertaining to the "reasonable possibility" standard, which establishes criteria for when recordkeeping and reporting are required for a modification that does not trigger major NSR. In defining that exclusion, Mississippi's rule quoted the relevant language from the federal PSD regulations. Subsequently, on December 21, 2007 (73 FR 72607), EPA amended the reasonable possibility standard in response to a decision by the

Continued

"pollution control projects" (PCPs).[7] In today's action, EPA is finalizing approval of these administrative changes into the Mississippi SIP. EPA's November 5, 2010, proposal addressed these revisions.

In addition to changes to address the Tailoring Rule and the aforementioned administrative changes mentioned above, Mississippi's December 9, 2010, SIP revision also includes: (1) Provisions to exclude facilities that produce ethanol through a natural fermentation process (hereafter referred to as the "Ethanol Rule") from the definition of "chemical process plants" in the major NSR source permitting program; and (2) revision to incorporate by reference changes pursuant to EPA's Fugitive Emissions Rule (73 FR 77882, December 19, 2008).[8] In today's final rulemaking, EPA is not taking final action on Mississippi's changes to its PSD regulations to exclude facilities from the definition of "chemical process plants" in the major NSR permitting program, nor is EPA taking final action on Mississippi's changes to incorporate the provisions of the Fugitive Emission Rule.

II. What is EPA's response to comments received on this action?

EPA received two sets of comments on the November 5, 2010, proposed rulemaking to approve revisions to Mississippi's SIP. One set of comments, provided by the Sierra Club, was in favor of EPA's November 5, 2010, proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA's November 5, 2010, proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into four categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter expresses concerns regarding a footnote in the November 5, 2010, proposal describing EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action "is illegal." Third, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Mississippi SIP is limited to the extent to which the Federal requirements remain enforceable." EPA's response to these four categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA's statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit, depending on the source category, either 100 or 250 tons of GHG per year. The Commenter also reiterates EPA's statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or higher than the GHG applicability levels, or modify any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the Commenter states: "No area in the State of Mississippi has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Mississippi to rescind that portion of its rules that would allow GHGs to trigger PSD."

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a "major stationary source" was one which emitted "any air pollutant subject to regulation under the Act" at or above the specified numerical thresholds; and defined a "major modification," in general, as a physical or operational change that increased emissions of "any pollutant subject to regulation under the Act" by more than an amount that EPA variously termed as de minimis or significant. In addition, in EPA's NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of "regulated NSR pollutant" (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)); noted that EPA added this term based on a request from a commenter to "clarify which pollutants are covered under the PSD program;" and explained that in addition to criteria pollutants for which a NAAQS has been established, "[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant." *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of "regulated NSR pollutant" includes "[a]ny pollutant that otherwise is subject to regulation under the Act." *See* 40 CFR 52.21(b)(50)(d)(iv); *see also id.* 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter's underlying premise that PSD requirements are not triggered for GHGs when GHGs become subject to regulation as of January 2, 2011. As just noted, this has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA's November 5, 2010, proposed rulemaking notice provides the general basis for the Agency's rationale that GHGs (while not a NAAQS pollutant) can trigger PSD permitting requirements. The November 5, 2010, notice also refers the reader to

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U.S. Court of Appeals for the DC Circuit. *See New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). While Mississippi will continue to exclude the reasonable possibility provision from its PSD regulations, it is revising the exclusion to reflect the revised reasonable possibility language at 40 CFR 52.21(r)(6) as promulgated on December 21, 2007.

[7] The Mississippi PSD regulations approved by EPA on July 10, 2006 (71 FR 38773), specifically excluded from incorporation by reference the federal regulatory provisions pertaining to "clean units" and PCPs. Subsequently, the DC Circuit vacated the federal clean unit and PCP provisions. *See New York* v. *EPA,* 413 F.3d at 3. Mississippi's September 14, 2010, proposed SIP revision removes the reference to these vacated federal regulations from its list of excluded Federal provisions.

[8] On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. Therefore, the 40 CFR part 51 and part 52 administrative regulations that were amended by the Fugitive Emissions Rule are stayed through October 3, 2011.

the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation* v. *EPA,* DC Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action.

Comment 2: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits during any gap between when GHG permitting requirements go into effect and when the SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter explains that narrowing "is illegal." Further, the Commenter states that "EPA has *not* proposed to narrow Mississippi's SIP approval here and any such proposal must be explicit and address the action specifically made with respect to Mississippi. EPA cannot sidestep these important procedural requirements."

Response 2: While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the narrowing approach was not the subject of EPA's November 5, 2010, proposed rulemaking to approve Mississippi's September 14, 2010, SIP revision. Rather the narrowing approach was the subject of a separate rulemaking, and any action to use this approach for Mississippi's SIP will be considered and finalized in an action separate from today's rulemaking. In today's final action, EPA is acting to approve a SIP revision submitted by Mississippi, and is not otherwise narrowing its approval of prior submitted and approved provisions in the Mississippi SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Mississippi, much less nationwide.

Response 3: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Mississippi's December 9, 2010, SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "*VII. Comments on Statutory and Executive Order Reviews,*" 75 FR 31601–31603, and "*VI. What are the economic impacts of the final rule?,*" 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, by putting in place higher PSD applicability thresholds for GHGs than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, provides relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 4: The Commenter states that "[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by or is applicable to GHGs." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the DC Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "EPA should explicitly state in any final rule that continued enforceability of these provisions in the Mississippi SIP is limited to the extent to which the federal requirements remain enforceable." The Commenter notes that if a stay is issued, these requirements should also be stayed.

Response 4: EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 9, 2010, the United States Court of Appeals for the DC Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc.* v. *EPA,* Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (DC Cir. December 10, 2010) (order denying stay motions).

III. What is the effect of today's final action?

Final approval of Mississippi's December 9, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG

sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is approving a portion of the changes made in Mississippi's December 9, 2010, SIP revision into Mississippi's SIP.

Mississippi's December 9, 2010, revision updates its existing incorporation by reference of the federal NSR program to include the relevant federal Tailoring Rule provisions set forth at 40 CFR 52.21 into the Mississippi SIP at APC–S–5—*Regulations for the Prevention of Significant Deterioration*.[9] EPA has determined that Mississippi's December 9, 2010, SIP revision is consistent with the Tailoring Rule. Furthermore, EPA has determined that the December 9, 2010, revision to Mississippi's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, at 75 FR 31561.

IV. When is today's action effective?

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on January 2, 2011. This is because a delayed effective date is unnecessary due to the nature of Mississippi's changes to its PSD regulations to establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, thereby relieving the State from certain CAA requirements that would otherwise apply to it. The January 2, 2011, effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the sources within Mississippi from considering the lower emissions thresholds for GHG permitting purposes. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective January 2, 2011.

V. Final Action

EPA is taking final action to approve Mississippi's December 9, 2010, SIP revision which includes updates to Mississippi's air quality regulations, APC–S–5—*Regulations for the Prevention of Significant Deterioration.* Specifically, Mississippi's December 9, 2010, SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the December 9, 2010, SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases,

[9] Mississippi's December 9, 2010, submittal also revises definitions for APC–S–6—*Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air Act;* however, these relate to title V and are not included in the SIP. As such, EPA is not taking action to approve Mississippi's update to this regulation in this rulemaking.

Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 20, 2010.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Z—Mississippi

■ 2. In § 52.1270(c) the table is amended by revising the following entry for "APC–S–5" to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
APC–S–5 Regulations for the Prevention of Significant Deterioration of Air Quality				
All		12/1/2010	12/29/2010 [Insert citation of publication].	APC–S–5 incorporates by reference the regulations found at 40 CFR 52.21 as of September 13, 2010. This EPA action is approving the incorporation by reference with the exception of the phrase "except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140," APC–S–5 incorporated by reference from 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t) APC–S–5. In addition, this EPA action is not incorporating by reference, into the Mississippi SIP, the administrative regulations that were amended in the Fugitive Emissions Rule (73 FR 77882) and are stayed through October 3, 2011.

* * * * *

[FR Doc. 2010–32667 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0697–201072; FRL–9244–5]

Approval and Promulgation of Implementation Plans; Alabama: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), to EPA on August 17, 2010, for parallel processing. ADEM submitted the final version of this SIP revision on December 14, 2010. The SIP revision incorporates updates to ADEM's air quality regulations impacting the regulation of greenhouse gas (GHG) under Alabama's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Alabama's PSD permitting requirements for their GHG emissions. The change is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels otherwise provided under the Clean Air Act (CAA or Act), which would overwhelm Alabama's permitting resources. EPA is approving Alabama's December 14, 2010, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments received on EPA's November 5, 2010, proposed approval of Alabama's August 17, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective January 18, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0697. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Alabama SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; e-mail address: *bradley.twunjala@epa.gov.* For

information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; *e-mail address: abrams.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the background for today's final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Alabama SIP.[1] Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,[2] the "Johnson Memo Reconsideration," [3] the "Light-Duty Vehicle Rule," [4] and the "Tailoring Rule." [5] Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

On August 17, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, ADEM submitted a draft revision to EPA for approval into the Alabama SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Alabama's PSD permitting requirements for GHG emissions. Subsequently, on November 5, 2010, EPA published a proposed rulemaking to approve Alabama's August 17, 2010, SIP revision under parallel processing. 75 FR 68285. Specifically, Alabama's August 17, 2010, draft SIP revision includes changes to ADEM's Air Quality Regulations, 335–3–14–.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD).* The changes to ADEM's Rule 335–3–14–.04 *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)* address the thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 5, 2010, **Federal Register** notice.

EPA's November 5, 2010, proposed approval was contingent upon Alabama providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 5, 2010, proposed rulemaking. 75 FR 68285. Alabama provided its final SIP revision on December 14, 2010. There were no changes between Alabama's August 17, 2010, draft SIP revision and the final SIP revision which was provided on December 14, 2010.

II. What is EPA's response to comments received on this action?

EPA received two sets of comments on the November 5, 2010, proposed rulemaking to approve revisions to Alabama's SIP. One set of comments, provided by the Sierra Club, was in favor of EPA's November 5, 2010, proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA's November 5, 2010, proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A summary of the adverse comments and EPA's responses are provided below.

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Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in

[1] On December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 77698. In a companion rulemaking, EPA proposed a federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because Alabama's SIP already authorizes Alabama to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Alabama is not subject to the proposed SIP Call or FIP.

[2] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[3] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

[4] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[5] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a "major stationary source" was one which emitted "any air pollutant subject to regulation under the Act" at or above the specified numerical thresholds; and defined a "major modification," in general, as a physical or operational change that increased emissions of "any pollutant subject to regulation under the Act" by more than an amount that EPA variously termed as de minimis or significant. In addition, in EPA's NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of "regulated NSR pollutant" (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)); noted that EPA added this term based on a request from a commenter to "clarify which pollutants are covered under the PSD program;" and explained that in addition to criteria pollutants for which a NAAQS has been established, "[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant." *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of "regulated NSR pollutant" includes "[a]ny pollutant that otherwise is subject to regulation under the Act." *See* 40 CFR 52.21(b)(50)(d)(iv); *see also id.* 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter's underlying premise that PSD requirements are not triggered for GHGs when GHGs become subject to regulation as of January 2, 2011. As just noted, this has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA's November 5, 2010, proposed rulemaking notice provides the general basis for the Agency's rationale that GHG (while not a NAAQS pollutant) can trigger PSD permitting requirements. The November 5, 2010, notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. *See* 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation* v. *EPA,* DC Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action.

Comment 2: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits during any gap between when GHG permitting requirements go into effect and when the SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter explains that narrowing "is illegal." Further, the Commenter states that "EPA has *not* proposed to narrow Alabama's SIP approval here and any such proposal must be explicit and address the action specifically made with respect to Alabama. EPA cannot sidestep these important procedural requirements."

Response 2: While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the narrowing approach was not the subject of EPA's November 5, 2010, proposed rulemaking to approve Alabama's August 17, 2010, draft SIP revision. Rather the narrowing approach was the subject of a separate rulemaking, and any action to use this approach for Alabama's SIP will be considered and finalized in an action separate from today's rulemaking. In today's final action, EPA is taking action to approve a SIP revision submitted by Alabama, and is not otherwise narrowing its approval of prior submitted and approved provisions in the Alabama SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Alabama, much less nationwide.

Response 3: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Alabama's August 17, 2010, SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in-and-of-itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "*VII. Comments on Statutory and Executive Order Reviews,*" 75 FR 31601–31603, and "*VI. What are the economic impacts of the final rule?,*" 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation

of GHGs. To the contrary, by putting in place higher PSD applicability thresholds for GHGs than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, provides relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 4: The Commenter states that "[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by or is applicable to GHGs." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "EPA should explicitly state in any final rule that continued enforceability of these provisions in the Alabama SIP is limited to the extent to which the federal requirements remain enforceable." The Commenter notes that if a stay is issued, these requirements should also be stayed. Additionally, the Commenter notes the following statement in Alabama's proposed rulemaking: "It is the opinion of ADEM that the PSD program is not the appropriate vehicle for regulating GHG emissions. ADEM is taking this action to insure continuance of primacy of permitting authority for the State of Alabama and to alleviate some of the "absurd results" of EPA's previous GHG regulatory actions. If future Congressional or judicial action results in GHGs not being regulated under the PSD program, ADEM intends to undertake a rulemaking action to delete the PSD permitting thresholds for GHGs from its regulations."

Response 4: EPA believes that it is most appropriate to take actions that are consistent with the Federal regulations that are in place at the time the action is being taken. To the extent that any changes to Federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. It appears that ADEM acknowledges, by their statement that they "intend to undertake a rulemaking action to delete the PSD permitting thresholds for GHGs from its regulations," that a future SIP revision may be necessary. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the D.C. Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc.* v. *EPA,* Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (DC Cir. December 10, 2010) (order denying stay motions).

III. What is the effect of today's final action?

Final approval of Alabama's December 14, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is approving the changes made in Alabama's December 14, 2010, final SIP revision into Alabama's SIP.

The changes to Alabama's SIP-approved PSD program that EPA is approving today are to Alabama's rules which have been formatted to conform to Alabama's SIP-approved PSD regulations 335–3–14–.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD),* but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules. EPA performed a line-by-line review of the proposed change to Alabama's SIP-approved PSD regulations 335–3–14–.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)* and has determined that the proposed change is consistent with (and substantively the same as) the change to the federal provisions made by EPA's Tailoring Rule. Furthermore, EPA has determined that the December 14, 2010, revision to Alabama's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, at 75 FR 31561.

IV. When is today's action effective?

EPA is making the effective date of today's final action the same day as Alabama's effective date for its rulemaking. In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on January 18, 2011. This is because a delayed effective date is unnecessary due to the nature of Alabama's changes to its PSD regulations to establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, thereby relieving the State from certain CAA requirements that would otherwise apply to it. The January 18, 2011, effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the sources within Alabama from considering the lower emissions thresholds for GHG permitting purposes. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective January 18, 2011.

V. Final Action

EPA is taking final action to approve Alabama's December 14, 2010, SIP revision which includes to Alabama's air quality regulation 335–3–14–.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD).* Specifically, Alabama's December 14, 2010, SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the December 14, 2010, SIP revision is approvable because it is in accordance with the CAA and EPA regulations including regulations pertaining to PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 20, 2010.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. In § 52.50 (c) the table is amended by revising the following entry for "335–3–14–.04" to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter No. 335–3–14 Air Permits				
*	*	*	*	*
Section 335–3–14–.04	Air Permits Authorizing Construction in Clean Air Areas [:prevention of Significant Deterioration (PSD)].	1/18/2011	12/29/2010 ..... [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2010–32665 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0691–201069, FRL–9244–6]

Approval and Promulgation of Implementation Plans; Kentucky: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky's Energy and Environment Cabinet, through the Kentucky Division for Air Quality (KDAQ), to EPA on August 5, 2010, for parallel processing. KDAQ submitted the final version of this SIP revision on December 13, 2010. The SIP revision, which incorporates updates to KDAQ's air quality regulations, includes two significant changes impacting the regulation of greenhouse gas (GHG) under Kentucky's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the revision provides the Commonwealth with authority to issue PSD permits governing GHGs. Second, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Kentucky's PSD permitting requirements for their GHG emissions. The first change is necessary because the Commonwealth of Kentucky is required to apply its PSD program to GHG-emitting sources, and unless it does so (or unless EPA promulgates a Federal implementation plan (FIP) to do so), such sources will be unable to receive preconstruction permits and therefore may not be able to construct or modify. The second change is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels otherwise provided under the Clean Air Act (CAA or Act), which would overwhelm Kentucky's permitting resources. EPA is approving the Commonwealth of Kentucky's December 13, 2010, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments received on EPA's November 5, 2010, proposed approval of Kentucky's August 5, 2010, SIP revision.

DATES: *Effective Date:* This rule will be effective January 3, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0691. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Kentucky SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; e-mail address: *bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; e-mail address: *abrams.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the background for today's final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action for the Kentucky SIP. The first four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,[1] the "Johnson Memo Reconsideration," [2] the "Light-Duty Vehicle Rule," [3] and the "Tailoring Rule." [4] Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. In a separate action, EPA called on the Commonwealth of Kentucky and 12 other States with SIPs that do not provide authority to issue PSD permits governing GHGs to revise their SIPs to provide such authority (the "GHG PSD SIP Call").[5] EPA established a deadline of March 31, 2011, for Kentucky (including the entire State, except for the Louisville Metro Air Pollution Control District) to submit its GHG PSD SIP. Finally, in the most recent action, EPA proposed to implement a FIP authorizing PSD permitting for GHGs for those States that are unable to revise their SIPs to provide that authority by the applicable deadline (the "GHG PSD FIP").[6] By a notice signed December 23, 2010, EPA finalized the FIP for seven States:

[1] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[2] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

[3] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[4] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

[5] "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call: Final Rule." 75 FR 77698 (December 13, 2010).

[6] "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan: Proposed Rule." 75 FR 53883 (September 2, 2010).

Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming.

On August 5, 2010,[7] in response to the Tailoring Rule and earlier GHG-related EPA rules, and in anticipation of the GHG PSD SIP Call rulemaking, KDAQ submitted a draft revision to EPA for approval into the Kentucky SIP to: (1) Provide the Commonwealth with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Kentucky's PSD permitting requirements for GHG emissions.[8] Subsequently, on November 5, 2010, EPA published a proposed rulemaking to approve a portion of Kentucky's August 5, 2010, SIP revision under parallel processing. 75 FR 68272. Specifically, Kentucky's August 5, 2010, draft SIP revision includes changes to Kentucky's Air Quality Regulations, *401 KAR 51:001—Definitions for 401 KAR Chapter 51.*[9] The changes include incorporating by reference the Federal definition for "subject to regulation" (as amended in the Tailoring Rule at 51.166(b)(48)) and revising the definition for "regulated NSR pollutant" to provide authority for the Commonwealth to regulate GHG and apply the Tailoring Rule's thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 5, 2010, **Federal Register** notice.

EPA's November 5, 2010, proposed approval was contingent upon the Commonwealth of Kentucky providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 5, 2010, proposed rulemaking. 75 FR 68272. Kentucky provided its final SIP revision on December 13, 2010. While there are minor differences between the draft and final regulations, EPA has determined that these differences do not warrant re-proposal of this action. Kentucky's draft regulations proposed some changes to certain definitions; however, Kentucky decided not to proceed with those changes and instead chose to retain the definitions set forth in Kentucky's regulations. The definitions retained from the prior version of Kentucky's regulations had previously been approved by EPA and incorporated into Kentucky's SIP. Kentucky's decision does not alter the portions of the SIP revision authorizing Kentucky to issue PSD permits governing GHGs and to implement the Tailoring Rule thresholds. Thus, EPA concludes that Kentucky's decision to retain certain definitions provided in its regulations does not warrant a new public comment period prior to EPA's final approval of the SIP revision.[10]

II. What is EPA's response to comments received on this action?

EPA received two sets of comments on the November 5, 2010, proposed rulemaking to approve revisions to Kentucky's SIP. One set of comments, provided by the Sierra Club, was in favor of EPA's November 5, 2010, proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA's November 5, 2010, proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into six categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter objects to EPA's interpretation of the Act that Kentucky will face a construction ban absent this SIP revision. Third, the Commenter asserts that EPA's notice does not provide sufficient information on which particular regulatory provisions are proposed for approval in EPA's November 5, 2010, proposed action. Fourth, the Commenter expresses concerns regarding a footnote in the November 5, 2010, proposal describing EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under Federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action is "inapplicable to this action and, if applicable, is illegal." Fifth, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Kentucky SIP is limited to the extent to which the Federal requirements remain enforceable." EPA's response to these six categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA's statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit, depending on the source category, either 100 or 250 tons of GHG per year. The Commenter also reiterates EPA's statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or higher than the GHG applicability levels, or modify any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the Commenter states: "[n]o area in the Commonwealth of Kentucky has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed

[7] While the transmittal letter for Kentucky's submission (the subject of this action) is dated July 15, 2010, EPA did not officially receive Kentucky's request for parallel processing until August 5, 2010.

[8] Although Kentucky's August 5, 2010, draft SIP revision included provisions (*i.e.,* 401 KAR 51:001 Section 1(80)(b) and (c)) to incorporate changes pursuant to EPA's Fugitive Emissions Rule (73 FR 77882, December 19, 2008), the Commonwealth's final submission did not include these provisions. Kentucky's December 14, 2010, final SIP revision did include changes to exclude facilities that produce ethanol through a natural fermentation process from the definition of "chemical process plants" in the major NSR source permitting program (*i.e.,* 401 KAR 51:001 Section 1 (118)). However, in today's final rulemaking, EPA is not taking any action on Kentucky's provisions to exclude facilities that produce ethanol through a natural fermentation process from the definition of "chemical process plants" in the major NSR permitting program.

[9] Kentucky's submittal also revises definitions for *401 KAR 52:001—Definitions for 401 KAR Chapter 52;* however, these definitions relate to title V and are not included in the SIP. As such, EPA is not taking final action to approve Kentucky's update to these definitions in this rulemaking.

[10] Kentucky's final rule also eliminates the draft provisions (at 401 KAR 51:001 Section 1(80)(b) and (c) of the draft rule) that would have incorporated changes pursuant to EPA's Fugitive Emissions Rule, 73 FR 77882 (December 19, 2008). As explained in the proposal, 75 FR 68273, EPA did not propose to take action on those provisions because EPA has stayed the Fugitive Emissions Rule (and the associated amendments to 40 CFR part 51 and part 52) until October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. Therefore, Kentucky's decision not to include those provisions in its final submittal has no impact on this action.

rulemaking related to this action. Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Kentucky to rescind that portion of its rules that would allow GHGs to trigger PSD."

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a "major stationary source" was one which emitted "any air pollutant subject to regulation under the Act" at or above the specified numerical thresholds; and defined a "major modification," in general, as a physical or operational change that increased emissions of "any pollutant subject to regulation under the Act" by more than an amount that EPA variously termed as de minimis or significant. In addition, in EPA's NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of "regulated NSR pollutant" (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)); noted that EPA added this term based on a request from a commenter to "clarify which pollutants are covered under the PSD program;" and explained that in addition to criteria pollutants for which a NAAQS has been established, "[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant." *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of "regulated NSR pollutant" includes "[a]ny pollutant that otherwise is subject to regulation under the Act." *See* 40 CFR 52.21(b)(50)(d)(iv); *see also id.* 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter's underlying premise that PSD requirements are not triggered for GHGs when GHGs become subject to regulation as of January 2, 2011. As just noted, this has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA's November 5, 2010, proposed rulemaking notice provides the general basis for the Agency's rationale that GHGs (while not a NAAQS pollutant) can trigger PSD permitting requirements. The November 5, 2010, notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. *See* 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation* v. *EPA,* D. C. Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action.

Comment 2: The Commenter raised concerns regarding EPA's interpretation of the Act that Kentucky will face a construction ban absent this SIP revision. In its letter, the Commenter mentions that it provided comments on EPA's GHG PSD SIP Call and GHG PSD FIP rulemakings expressing that "EPA's interpretation of the Act to impose a construction ban based on Section 165(a) is incorrect." Further, the Commenter states: "No statutory language addressing implementation plan requirements can be construed to produce self-executing changes to SIPs or FIPs approved or promulgated under section 110 of the Act unless Congress enacts statutory provisions explicitly amending those SIPs or FIPs to incorporate new requirements, thereby obviating the need for rulemaking under section 110(a) or (c) of the Act to effect revisions to those implementation plans." The Commenter also contends that there is no support for EPA's "permit moratorium" interpretation because (in the Commenter's opinion) CAA section 165(a) is not self-executing and approved SIPs and promulgated FIPs can only be changed through section 110 rulemakings to revise those plans. In support of its position, Commenter cites to *United States* v. *Cinergy Corp.,* No. 09–3344 (7th Cir. October 12, 2010). The Commenter further states that Kentucky would be able to issue PSD permits after January 2, 2011, even without GHG limits, because its current SIP is approved and it would be acting consistent with that approved SIP. Further, the Commenter states that "EPA's rule contemplated that states have 3 years to revise their SIPs when an NSR-related change occurs and, assuming without conceding that EPA could impose PSD on GHGs, EPA should have followed that procedure in this case."

Response 2: EPA notes that the Agency provided an extensive response in the final GHG SIP Call rulemaking to comments nearly identical to comments received on this rulemaking, 75 FR 77698, and EPA incorporates by reference those responses, as contained in the preamble and the Tailoring Rule Response to Comment document, into this rulemaking. The following gives examples of references in the GHG SIP Call rulemaking preamble and record in which EPA responded to these, or substantially similar, comments:

With respect to the comments that (i) "EPA's interpretation of the Act to impose a construction ban based on Section 165(a) is incorrect;" (ii) "No statutory language addressing implementation plan requirements can be construed to produce self-executing changes to SIPs or FIPs approved or promulgated under section 110 of the Act unless Congress enacts statutory provisions explicitly amending those SIPs or FIPs to incorporate new requirements, thereby obviating the need for rulemaking under section 110(a) or (c) of the Act to effect revisions to those implementation plans;" and (iii) there is no support for EPA's "permit moratorium" interpretation because (in the Commenter's opinion) CAA section 165(a) is not self-executing and approved SIPs and promulgated FIPs can only be changed through section 110 rulemakings to revise those plans, *see,* for example, 75 FR 77705 in footnote 16, and 75 FR 77710–77711. EPA notes further that the requirement of CAA section 165(a)(1) that stationary sources that emit the requisite quantity of pollutants subject to regulation obtain a pre-construction permit is mandated by the CAA and is automatically updated to apply to any pollutant newly subject to regulation; thus, contrary to the commenter's statement, EPA is not construing the CAA to "produce self-executing changes to SIPs * * *." In addition, today's action does not create what the Commenter calls a "permit moratorium"; in fact today's rule puts in place a permitting authority for GHG-emitting sources for Kentucky only one day after GHG PSD permitting requirements go into effect. Further, no "self-executing changes" to Kentucky's SIP are made in today's action; EPA is simply approving Kentucky's submitted

December 13, 2010, SIP revision according to the proper process.

With respect to the comment that a decision by Judge Posner (*i.e., United States* v. *Cinergy Corp.,* No. 09–3344 (7th Cir. October 12, 2010)) directly addresses this issue, *see* 75 FR 77705 in footnote 16.

With respect to the comment that Kentucky would be able to issue PSD permits after January 2, 2011, even without GHG limits, because its current SIP is approved and it would be acting consistent with that approved SIP, EPA notes that it is true that Kentucky could issue such a permit to cover the non-GHG pollutants emitted by a source. If the source emits GHGs in at least the specified amount, however, then the source would need a PSD permit for its GHG emissions. Kentucky, absent an approved SIP revision applying the State's PSD program to GHGs, would not have the authority to issue such a permit.

With respect to the comment that "EPA's rule contemplated that States have 3 years to revise their SIPs when an NSR-related change occurs and, assuming without conceding that EPA could impose PSD on GHGs, EPA should have followed that procedure in this case," *see* 75 FR 77707–77708. In any event, the proper length of time EPA must provide States to act is also irrelevant to this rule because this action deals with a SIP revision actually submitted by Kentucky to EPA for approval.

Comment 3: The Commenter indicates that EPA's proposed action on Kentucky's draft rules is inconsistent with CAA section 110 because it does not provide for Federal notice and comment on the final State action.

Response 3: EPA disagrees with the Commenter's assertion that EPA's proposed action is inconsistent with section 110 of the CAA because EPA's proposed approval was based on a draft form of the Commonwealth's regulations. As explained in our proposal at 75 FR 68273, EPA utilized a "parallel processing" procedure for this SIP revision. Under this procedure, EPA proposes rulemaking action concurrently with the State's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). EPA reviews that SIP submittal, even though the regulation is not yet adopted in final form by the State, as if it were a final, adopted regulation. In doing so, EPA evaluates the draft regulation against the same approvability criteria as any other SIP submittal. Thus, we have not used the "parallel processing" procedure to avoid any statutory requirements. In this case, as explained earlier in this notice, EPA has determined that the minor differences between the draft and final regulations are not significant and do not warrant re-proposal of this action. Accordingly, the proposal gave the public the appropriate opportunity to comment on the substance of the August 5, 2010, SIP revision for which EPA is today issuing a final approval.

Comment 4: The Commenter states that EPA's proposed rulemaking does not provide sufficient information on which particular revisions are included in the November 5, 2010, proposed action. Specifically, the Commenter mentions that EPA does not provide citations or other explicit reference to what EPA is actually approving. The Commenter states that "this failure makes it impossible for the public to meaningfully assess and comment regarding the provisions on which EPA proposes to act." Further, the Commenter explains that the docket contained over 100 pages of underline/strikeout regulatory text, much of which is already in the Kentucky SIP.

Response 4: EPA disagrees that the November 5, 2010, proposed rulemaking does not provide sufficient information on which particular regulatory provisions EPA was proposing for approval. To the contrary, in the section entitled "*V. What is EPA's Analysis of Kentucky's Proposed SIP Revision?*" of the November 5, 2010, proposal, EPA explains that the proposed rulemaking would approve changes to Kentucky's regulations, at 401 KAR 51:001—*Definitions for 401 KAR Chapter 51,* including an update to the definition of "subject to regulation" that provides the Commonwealth with authority to issue PSD permits governing GHGs and establishes appropriate GHG emission thresholds for PSD applicability. 75 FR 68278. Additionally, EPA's November 5, 2010, notice identifies those portions of Kentucky's submittal that are not being acted upon in this proceeding. *See* 75 FR 68273 and 68278 n.10. Finally, as the Commenter notes, the docket for this action includes a marked up version of 401 KAR 51:001—*Definitions for 401 KAR Chapter 51* showing the revisions under consideration. Thus, EPA sufficiently identified the particular SIP revisions at issue in this action.

Comment 5: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under Federal law to obtain PSD permits during any gap between when GHG permitting requirements go into effect and when the SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter explains that narrowing is "inapplicable to this action and, if applicable, is illegal."

Response 5: While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, EPA does acknowledge that the narrowing approach is inapplicable to the action that EPA is today taking for Kentucky's December 13, 2010, SIP revision. In today's final action, EPA is acting to approve a SIP revision submitted by Kentucky, and is not otherwise narrowing its approval of prior submitted and approved provisions in the Kentucky SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 6: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Kentucky, much less nationwide.

Response 6: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Kentucky's December 13, 2010, SIP revision, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the State law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it

would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today's rule is a routine approval of a SIP revision, approving State law, and does not impose any requirements beyond those imposed by State law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of State law in today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "*VII. Comments on Statutory and Executive Order Reviews,*" 75 FR 31601–31603, and "*VI. What are the economic impacts of the final rule?,*" 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, by putting in place higher PSD applicability thresholds for GHGs than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, provides relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 7: The Commenter states that "[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by or is applicable to GHGs." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the DC Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "EPA should explicitly state in any final rule that continued enforceability of these provisions in the Kentucky SIP is limited to the extent to which the Federal requirements remain enforceable." The Commenter notes that if a stay is issued, these requirements should also be stayed.

Response 7: EPA believes that it is most appropriate to take actions that are consistent with the Federal regulations that are in place at the time the action is being taken. To the extent that any changes to Federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the DC Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc.* v. *EPA,* Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (DC Cir. December 10, 2010) (order denying stay motions).

III. What is the effect of today's final action?

Final approval of Kentucky's December 13, 2010, SIP revision will make Kentucky's SIP adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for a GHG PSD FIP. Furthermore, final approval of Kentucky's SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is approving a portion of the changes made in Kentucky's December 13, 2010, proposed SIP revision into the Commonwealth's SIP.

The changes to Kentucky's SIP-approved PSD program that EPA is approving today are to Kentucky's rules which have been formatted to conform to Kentucky's rule drafting standards for 401 KAR 51:001—*Definitions for 401 KAR Chapter 51,* but in substantive content the rules that address the Tailoring Rule provisions are the same as the Federal rules. As part of its review of the Kentucky submittal, EPA performed a line-by-line review of Kentucky's proposed SIP changes and has determined that the provisions that EPA is approving today are consistent with the Tailoring Rule. Furthermore, EPA has determined that the December 13, 2010, revision to Kentucky's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, at 75 FR 31561.

IV. When is today's action effective?

EPA is making the effective date of today's final action the same day as the Commonwealth's effective date for its rulemaking. In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on January 3, 2011. This is because a delayed effective date is unnecessary due to the nature of the Commonwealth's changes to its PSD regulations, which provide the Commonwealth with the needed authority to regulate GHG-emitting sources for permitting purposes. Additionally, Kentucky's changes to its PSD regulations to establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, thereby relieving the Commonwealth from certain CAA requirements that would otherwise apply to it. The January 3, 2011, effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule provides sources emitting GHGs at or above the higher emissions thresholds with a permitting authority from which it can seek the permits which, prior to this rule, Federal and State law already required them to seek, and relieves the sources within the Commonwealth from considering the lower emissions thresholds for GHG permitting purposes. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective January 3, 2011.

V. Final Action

EPA is taking final action to approve the Commonwealth of Kentucky's December 13, 2010, SIP revision, which includes updates to Kentucky's air quality regulations, 401 KAR 51:001—*Definitions for 401 KAR Chapter 51,* relating to PSD requirements for GHG-emitting sources. Significantly, Kentucky's December 13, 2010, SIP revision: (1) Provides the Commonwealth with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the December 13, 2010, SIP revision is

approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 20, 2010.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. In § 52.920(c) table 1 is amended by revising the entry for "401 KAR 51:001" to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA–APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards				
401 KAR 51:001	Definitions for 401 KAR Chapter 51.	01/03/2011	12/29/2010 [Insert citation of publication].	Except the phrase "except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140," in 401 KAR 51:001 Section 1 (118)(a)(2)(a) and the phrase "except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140," in 401 KAR 51:001 Section 1 (118)(3)(b)(20).
*	*	*	*	* * *

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[FR Doc. 2010–32664 Filed 12–28–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9244–7]

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding that seven states have failed to submit revisions to their EPA-approved state implementation plans (SIPs) to satisfy requirements of the Clean Air Act (CAA) to apply Prevention of Significant Deterioration (PSD) requirements to greenhouse gas (GHG)-emitting sources. By notice dated December 13, 2010, EPA issued a "SIP call" for these seven, and six other, states, requiring each state to revise its SIP as necessary to correct the SIP's failure to apply PSD to such sources and establishing a SIP submittal deadline for each state. EPA established December 22, 2010, as the deadline for these seven states. By this action, EPA is making a finding that the seven states failed to submit the required SIP revisions by that date. This finding requires EPA to promulgate a Federal implementation plan (FIP) for these seven states applying PSD to GHG-emitting sources, and EPA is taking a separate action to promulgate the FIP immediately. The seven states are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming.

DATES: This action is effective on December 29, 2010.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0107. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3450; *fax number:* (919) 541–5509; *e-mail address: sutton.lisa@epa.gov*.

For information related to a specific state, local, or tribal permitting authority, please contact the appropriate EPA regional office:

EPA regional office	Contact for regional office (person, mailing address, telephone number)	Permitting authority
I	Dave Conroy, Chief, Air Programs Branch, EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, (617) 918–1661.	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.
II	Raymond Werner, Chief, Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3706.	New Jersey, New York, Puerto Rico, and Virgin Islands.
III	Kathleen Cox, Chief, Permits and Technical Assessment Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2173.	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.
IV	Lynorae Benjamin, Chief, Regulatory Development Section, Air, Pesticides and Toxics Management Division, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
V	J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–1430.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
VI	Jeff Robinson, Chief, Air Permits Section, EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6435.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
VII	Mark Smith, Chief, Air Permitting and Compliance Branch, EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7876.	Iowa, Kansas, Missouri, and Nebraska.
VIII	Carl Daly, Unit Leader, Air Permitting, Monitoring & Modeling Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6416.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
IX	Gerardo Rios, Chief, Permits Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3974.	Arizona; California; Hawaii and the Pacific Islands; Indian Country within Region 9 and Navajo Nation; and Nevada.
X	Nancy Helm, Manager, Federal and Delegated Air Programs Unit, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101, (206) 553–6908.	Alaska, Idaho, Oregon, and Washington.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this rule include state and local permitting authorities.[1] By this action, EPA is making a finding of failure to submit the required SIPs for seven states (comprising eight state and local programs) because their EPA-approved SIP PSD programs do not apply to GHG-emitting sources. The seven states are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In Arizona, the finding of failure applies to two EPA-approved PSD permit programs—"Pinal County" and "Rest of State (Excludes Maricopa County, Pima County, and Indian Country)."

B. How is the preamble organized?

The information presented in this preamble is organized as follows:

II. Background

A. CAA and Regulatory Context

EPA described the relevant background information in the proposed and final rulemaking for what we call the GHG PSD SIP call or, simply, the SIP call,[2] as well as in what we call the Tailoring Rule.[3] 75 FR at 31518–21. Knowledge of this background information is presumed and will be only briefly summarized here.

1. SIP PSD Requirements

In general, under the CAA PSD program, a stationary source must obtain a permit prior to undertaking construction or modification projects that would result in specified amounts of new or increased emissions of air pollutants that are subject to regulation under other provisions of the CAA. CAA sections 165(a)(1), 169(1). As we described in the SIP call and elsewhere, several CAA provisions, taken together, mandate that SIPs include PSD programs that are applicable to any air pollutant that is subject to regulation under the CAA, including, as discussed later in this preamble, GHGs on and after January 2, 2011. CAA sections 110(a)(2)(C), 110(a)(2)(J), 161.

2. SIP Inadequacy and Corrective Action

The CAA provides a mechanism for the correction of SIPs with certain types of inadequacies. CAA section 110(k)(5) authorizes the Administrator to "find[ ] that [a SIP] * * * is substantially inadequate to * * * comply with any requirement of this Act," and, based on that finding, to "require the State to revise the [SIP] * * * to correct such inadequacies." This latter action is commonly referred to as a "SIP call." In addition, this provision provides that EPA must notify the state of the substantial inadequacy and authorizes EPA to establish a "reasonable deadline[ ] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision.

If EPA does not receive the corrective SIP revision by the deadline, CAA section 110(c)(1)(A) authorizes EPA to "find[ ] that [the] State has failed to make a required submission." Once EPA makes that finding, CAA section 110(c)(1) requires EPA to "promulgate a Federal implementation plan at any time within 2 years after the [finding] * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP]."

B. Recent EPA Regulatory Action Concerning PSD Requirements for GHG-Emitting Sources

In recent months, EPA has taken several distinct actions related to GHGs under the CAA. Some of these, in conjunction with the operation of the CAA, trigger PSD applicability for GHG-emitting sources on and after January 2, 2011, but focus the scope of PSD on the largest GHG-emitting sources. These actions include what we call the Endangerment Finding,[4] the Light-Duty Vehicle Rule,[5] the Johnson Memo Reconsideration,[6] and the Tailoring Rule.

Closely related to this action, EPA promulgated the PSD GHG SIP call, under authority of CAA section 110(k)(5). In that action, applicable to 13 states, the Administrator issued a finding of substantial inadequacy as well as a SIP call and established a deadline for submission of the corrective SIP revision. The deadline was 12 months after the date of the SIP call, unless the state indicated to EPA that it did not object to an earlier deadline, as early as 3 weeks after the date of the SIP call. Twelve of the states so indicated and therefore received an earlier deadline. 75 FR at 77705.

All 13 states and their deadlines are listed in table II–1, "SIP Call States and SIP Submittal Deadlines":

[1] For convenience, we refer to "states" in this rulemaking to collectively mean states and local permitting authorities.

[2] "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule," 75 FR at 77698, 77700–04 (December 13, 2010) (final SIP call); "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Proposed Rule," 75 FR 53892, 53896–98 (September 2, 2010) (proposed SIP call).

[3] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514, 31518–21 (June 3, 2010).

[4] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[5] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[6] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

TABLE II–1—SIP CALL STATES AND SIP SUBMITTAL DEADLINES

State (or area)	SIP submittal deadline
Arizona: Pinal County	12/22/10
Arizona: Rest of State (Excludes Maricopa County, Pima County, and Indian Country)	12/22/10
Arkansas	12/22/10
California: Sacramento Metropolitan AQMD	01/31/11
Connecticut	03/01/11
Florida	12/22/10
Idaho	12/22/10
Kansas	12/22/10
Kentucky (Jefferson County): Louisville Metro Air Pollution Control District	01/01/11
Kentucky: Rest of State (Excludes Louisville Metro Air Pollution Control District (Jefferson County))	03/31/11
Nebraska	03/01/11
Nevada: Clark County	07/01/11
Oregon	12/22/10
Texas	12/01/11
Wyoming	12/22/10

The SIP submittal deadlines that the final SIP call rule established for the states reflect, in almost all instances, a recognition by EPA and the states of the need to move expeditiously to assure the availability of a permitting authority. In the SIP call, EPA made clear that the purpose of establishing the shorter period as the deadline—for any state that advised us that it did not object to that shorter period—is to accommodate states that wish to ensure that a FIP is in effect as a backstop to avoid any gap in PSD permitting. 75 FR at 77710.

Seven of the 13 SIP-called states (including 8 of the 15 affected PSD programs) stated that they did not object to a SIP submittal deadline of December 22, 2010 (the earliest possible deadline), 75 FR at 77705,[7] and those states are the subject of this final rule.

Also closely related to this action, EPA proposed a FIP[8] action related to GHGs. We stated in the proposed FIP that if any of the states for which we issued the SIP call did not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the state. We explained that we would take these actions immediately in order to minimize any period of time during which larger-emitting sources may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits. 75 FR at 53889.

III. Final Action: Finding of Failure of Certain States To Submit Corrective SIP Revisions

By this final rule, EPA is making a finding under CAA section 110(c) that seven states failed to submit a corrective SIP by December 22, 2010, which was their SIP submittal deadline, as established under our SIP call. These seven states are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In Arizona, the finding of failure applies to two EPA-approved PSD permit programs—"Pinal County" and "Rest of State (Excludes Maricopa County, Pima County, and Indian Country)." These seven states were included in the SIP call because their EPA-approved SIP PSD programs do not apply to GHG-emitting sources.

As we stated in our proposed FIP rulemaking (*see* 75 FR at 53889), if a state for which we issue the SIP call does not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision under CAA section 110(c)(1)(A). Once we make that finding, we are required under CAA section 110(c) to promulgate a FIP (unless first the state corrects the deficiency and EPA approves the plan or plan revision). By a separate action today, we are promulgating the FIP immediately.

The making of a finding of failure in this final rule is important because it is the prerequisite for the FIP, and the FIP, in turn, establishes EPA as the permitting authority for GHG-emitting sources. Without our acting as that authority, large GHG-emitting sources in the affected states may be unable to obtain a PSD permit for their GHG emissions and therefore may face delays in undertaking construction or modification projects. Sources that emit or plan to emit large amounts of GHGs will, starting January 2, 2011, be required to obtain PSD permits before undertaking new construction or modification projects, but neither the states nor, absent the FIP, EPA would be authorized to issue the permits. With the FIP, EPA will have the authority to issue PSD permits by January 2, 2011.

This rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d)(3) provides an exception when the agency finds good cause exists for a rule to take effect in less than 30 days.

We find good cause exists here to make this rule effective upon publication because implementing a 30-day delayed effective date would interfere with the Agency's ability to ensure that, as of January 2, 2011, there is a permitting authority authorized to issue certain major stationary sources in the affected states the required PSD permits for GHG emissions. A 30-day delay in the effective date of this rule will impede implementation of this rule and create regulatory confusion. This rule, establishing that certain states failed to submit corrective SIP revisions by their December 22, 2010, deadline, is necessary so that EPA can promulgate a FIP for those same states on December 23, 2010. This timing will allow the FIP to be published and become effective by the January 2, 2011, date that PSD will first apply to GHG-emitting sources under the CAA. If EPA could not meet

[7] More detailed discussion about these seven states is included in the Supplemental Information Document prepared by EPA in support of the final SIP call. The Supplemental Information Document can be found in the docket for this rulemaking, at Document ID No. EPA–HQ–OAR–2010–0107–0129.

[8] Proposed rule, "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan." 75 FR 53883 (September 2, 2010). The notice can be found in the docket for this rulemaking, at Document ID No. EPA–HQ–OAR–2010–0107–0045.

those dates, for whatever reason, then, as of January 2, 2011, certain major stationary sources in the affected states would be required to obtain PSD permits for GHG emissions that no permitting authority would be authorized to issue. Thus, it would be impractical to wait 30 days for this rule to take effect. Moreover, EPA finds that it is necessary to make this rule effective upon publication to avoid any economic harm that the public and the regulated industry might incur if there is no permitting authority able to issue PSD permits for GHG emissions on January 2, 2011.

The purpose of the APA's 30-day effective date provision is to give affected parties time to adjust their behavior before the final rule takes effect. Each of the states to which this rule applies indicated in comment letters to EPA that they do not object to those deadlines. Both the states and the public have been aware that we would take this approach to this rule for some time, that is, that we would establish a SIP submittal deadline as early as December 22, 2010, so that we could make a finding of failure to submit and promulgate a FIP as early as December 23, 2010, in order that the FIP could take effect by the January 2, 2011, date that PSD begins to apply to GHG-emitting sources. We described this approach in the proposed SIP call that was signed and made available to the public on August 12, 2010, even before its September 2, 2010, publication date in the **Federal Register**. Moreover, the public was afforded the opportunity to comment on this approach in the SIP call proposal. *See* 75 FR 53892, 53896.

In addition, this rule is not a major rule under the Congressional Review Act (CRA). Thus, the 60-day delay in effective date required for major rules under the CRA does not apply.

IV. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedure Act (APA)

This is a final EPA action but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking.

However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B), which excuses the notice-and-comment obligation "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." While the good cause exception is to be narrowly construed, *Utility Solid Waste Activities Group* v. *Environmental Protection Agency,* 236 F.3d 749, 754 (DC Cir. 2001), it is also "an important safety valve to be used where delay would do real harm." *U.S. Steel Corp.* v. *U.S. Environmental Protection Agency,* 595 F.2d 207, 214 (5th Cir. 1979). Notice and comment is impracticable where "an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required." *Utility Solid Waste Activities Group,* 236 F.3d at 754. Notice and comment is contrary to the public interest where "the interest of the public would be defeated by any requirement of advance notice." *Id.* at 755.

Here, notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994). In addition, in this case, notice and comment would be impracticable and contrary to the public interest for the same reasons, discussed earlier in this preamble, why a 30-day effective date would be impracticable and contrary to the public interest.

B. Executive Order 12866—Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993). This action issues a finding that certain states failed to submit corrective SIPs by the deadline established in EPA's recently promulgated SIP call for the same states. This type of action is exempt from review under EO 12866.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. However, OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.,* 40 CFR 52.21) and title V (*see* 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 and OMB control number 2060–0336, respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to the notice-and-comment requirement of the APA, because the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b). Thus, this rule is not subject to the RFA.

E. Unfunded Mandates Reform Act

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

This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

F. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on this action, as part of the FIP proposal, from state and local officials.

G. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any tribal implementation plans. This action is limited to states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this final rule, EPA specifically solicited additional comment on the proposal for this action from tribal officials and we received one comment from a tribal agency. Additionally, EPA participated in a conference call on July 29, 2010, with the National Tribal Air Association (NTAA).

H. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

J. National Technology Transfer and Advancement Act

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

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

V. Judicial Review

Under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 28, 2011. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VI. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–32762 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0205; FRL–8857–4]

Imazosulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of imazosulfuron in or on pepper, bell; pepper, non-bell; rice, grain; and tomato. Valent USA Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 29, 2010. Objections and requests for hearings must be received on or before February 28, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0205. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

This listing is not intended to be exhaustive, but rather 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 get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 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–2009–0205 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 28, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0205, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online 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. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 6, 2009 (74 FR 20947) (FRL–8412–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7535) by Valent USA Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596. The petition requested that 40 CFR part 180 be amended by adding a section for the herbicide imazosulfuron and establishing tolerances therein for residues of imazosulfuron, 2-chloro-*N*-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl] imidazo-[1,2-a]pyridine-3-sulfonamide, in or on pepper, bell, fruit; pepper, non-bell, fruit; rice, grain; and tomato, fruit; each at 0.02 parts per million (ppm). That notice referenced a summary of the petition prepared by Valent USA Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

EPA has modified the proposed commodity terms for pepper and tomato commodities and revised the requested tolerance expression in accordance with current policy. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has

sufficient data to assess the hazards of and to make a determination on aggregate exposure for imazosulfuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with imazosulfuron follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicology data for imazosulfuron suggest that this herbicide possesses relatively low toxicity. Many of the effects of single or repeated dosing were observed near or beyond the respective limit doses.

Imazosulfuron is of low acute toxicity by the oral, dermal, and inhalation routes of exposure; it is not a skin or eye irritant or a dermal sensitizer. The primary target organ of imazosulfuron in repeated-dose studies was the liver in all species tested. Mild to moderate thyroid effects were apparent only in the chronic toxicity study in dogs. Dramatic eye effects (retinal degeneration, lens vascularization, cataracts and corneal scarring) were observed in rats fed > 1,000 mg/kg/day beginning at 3 months in the chronic toxicity/carcinogenicity study. Ocular effects (increased incidence of eye opacity, corneal edema, inflammation and neovascularization) were also observed in the high-dose males (4,577 mg/kg/day) in the 90-day feeding toxicity study in rats. Decreased body weight and body weight gain compared to control were frequent findings throughout the toxicology database for imazosulfuron.

Clinical signs (decreased motor activity, abnormal gait, upward curvature of the spine and piloerection) were observed in males at the limit dose of the acute neurotoxicity study; however, these effects can be attributed to generalized toxicity and were resolved by Day 2 of the study. No neurotoxic effects were observed during the subchronic screening battery or noted as clinical signs in any other repeated-dose study.

No developmental effects were observed at the highest dose tested (HDT) (125 mg/kg/day) in the rabbit developmental toxicity study. No developmental or reproductive toxicity was observed in the 1-generation rat study. Decreased pup viability was observed in the rat 2-generation reproduction study at a dose approaching the limit dose (LOAEL = 892 mg/kg/day) in both the F1 and F2 offspring generations. Mortality was also observed in the parental generation at this dose. No increased qualitative or quantitative offspring susceptibility was apparent in any of the submitted studies for imazosulfuron.

There was no evidence of carcinogenicity in rats and mice up to the limit dose at 24 and 18 months, respectively. Imazosulfuron was determined to be non-mutagenic in bacteria and negative in an *in vivo* mammalian cytogenetics assay. Overall, there was no evidence that imazosulfuron was either mutagenic or clastogenic in either *in vivo* or *in vitro* assays. The cancer classification is "not likely to be carcinogenic to humans," based on the absence of significant tumor increases in the carcinogenicity studies.

Specific information on the studies received and the nature of the adverse effects caused by imazosulfuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "Imazosulfuron: Human Health Risk Assessment for Proposed Uses on Rice, Peppers and Tomatoes," p. 45 in docket ID number EPA–HQ–OPP–2009–0205.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, *see http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for imazosulfuron used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR IMAZOSULFURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	An acute reference dose specific to females age 13–49 was not identified, because there was no prenatal or fetal toxicity observed in developmental or reproductive animal studies following a single oral dose.		
Acute dietary (General population including females 13–49 years of age and infants and children).	NOAEL = 400 mg/kg/day UF_A = 10x.	Acute RfD = 4 mg/kg/day.	Acute neurotoxicity screening battery. LOAEL = 2,000 mg/kg/day based on the following clinical signs: Abnormal gait, decreased activity, piloerection and upward curvature of the spine; and incidents of irregular breathing, reduced righting reflex, tremors, decreased visual placement response in males and increased response to sound in one female.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR IMAZOSULFURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	UF_H = 10x FQPA SF = 1x NOAEL= 75 mg/kg/day UF_A = 10x.	aPAD = 4 mg/kg/day Chronic RfD = 0.75 mg/kg/day.	Chronic toxicity in the dog. LOAEL = 150 mg/kg/day based on moderate thyroid hypertrophy (males at mid- and high-dose; mild hypertrophy in females at high-dose).
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	UF_H = 10x FQPA SF = 1x NOAEL= 235 mg/kg/day UF_A = 10x.	cPAD = 0.75 mg/kg/day. LOC for MOE = 100	Reproduction, 2-generation (rat). LOAEL = 892 mg/kg/day based on mortality, clinical signs, decreased body weights, body weight gains and food consumption in parents. 90-day oral toxicity (rat). LOAEL = 956 mg/kg/day based on decreased body weight gains and food efficiency.
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).	UF_H = 10x. FQPA SF = 1x. No systemic toxicity occurred at the limit dose and the primary toxic effects of concern (liver, eye) were adequately assessed in a 21-day dermal toxicity study. It is concluded that this compound is not or is poorly absorbed through the skin and, therefore, a quantitative risk assessment for this route and duration of exposure is not necessary.		
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).	Inhalation (or oral) study NOAEL = 235 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x. UF_H = 10x. FQPA SF = 1x	LOC for MOE = 100	Reproduction, 2-generation (rat). LOAEL = 892 mg/kg/day based on mortality, clinical signs, decreased body weights, body weight gains and food consumption in parents. 90-day oral toxicity (rat). LOAEL = 956 mg/kg/day based on decreased body weight gains and food efficiency.
Cancer (Oral, dermal, inhalation)	Classification: "Not likely to be Carcinogenic to Humans" based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. $UF_{S\ =}$ use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to imazosulfuron, EPA considered exposure under the petitioned-for tolerances. There are no tolerances currently established for imazosulfuron. EPA assessed dietary exposures from imazosulfuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for imazosulfuron. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with imazosulfuron. DEEM™ 7.81 default concentration factors were used to estimate residues of imazosulfuron in processed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with imazosulfuron. DEEM™ 7.81 default concentration factors were used to estimate residues of imazosulfuron in processed commodities.

iii. *Cancer.* Based on the results of carcinogenicity studies in rats and mice, EPA classified imazosulfuron as "Not likely to be Carcinogenic to Humans"; therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for imazosulfuron. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The residues of concern in drinking water include imazosulfuron and its degradates HMS, IPSN, UDPM, ADPM, and SDPM. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for imazosulfuron and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of imazosulfuron and its degradates. Further information regarding EPA

drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), Tier 1 Rice Model, and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of imazosulfuron and its degradates for both acute exposures and chronic exposures for non-cancer assessments are estimated to be 278.9 parts per billion (ppb) for surface water (based on the Tier 1 Rice Model results) and 4.8 ppb for ground water (based on the SCI–GROW model results).

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessment, the water concentration value of 278.9 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Imazosulfuron is currently registered for the following uses that could result in residential exposures: Residential turfgrass and recreational areas. EPA assessed residential exposure using the following assumptions: There is a potential for exposure of homeowners applying products containing imazosulfuron on home lawns. There is also a potential for post-application exposure of adults and children entering turf areas that have been treated with imazosulfuron and for bystander exposure of adults and children in areas adjacent to pesticide applications.

Residential handlers may receive short-term dermal and inhalation exposure to imazosulfuron when mixing, loading and applying the pesticide on home lawns. Since a dermal endpoint of concern was not identified for imazosulfuron, only short-term inhalation exposure of residential handlers was assessed.

Adults and children may receive short-term inhalation and dermal exposures from entering turf areas treated with imazosulfuron. Volatilization of imazosulfuron may also be a source of short-term post-application inhalation exposure of bystanders nearby application sites. Finally, children may receive short-term incidental oral exposure (*i.e.,* hand-to-mouth, object-to-mouth and soil ingestion exposure) during post-application activities on treated turf. EPA did not identify any dermal endpoints of concern for imazosulfuron; and a quantitative post-application inhalation exposure assessment was not performed for imazosulfuron due to its low acute inhalation toxicity, low vapor pressure ($< 3.5 \times 10^{-6}$ Pa), low proposed use rate (0.3 lb ai/A), and the soil-directed application method (*i.e.,* it is not applied using equipment, such as air blast sprayers, that would result in higher post-application inhalation exposures). Therefore, EPA assessed only short-term post-application incidental oral exposure of children (toddlers).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The pre- and postnatal toxicity database for imazosulfuron includes guideline rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. No developmental effects were observed at the HDT in the rabbit developmental toxicity study, and no developmental or reproductive toxicity was observed in the developmental (1-generation) rat study. In the 2-generation rat reproduction study, both decreased pup viability and parental mortality were observed, but only at a dose approaching the limit dose.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for imazosulfuron is largely complete, lacking only an immunotoxicity study. EPA has evaluated the available toxicity data for imazosulfuron and determined that an additional database uncertainty factor is not needed to account for potential immunotoxicity. The most sensitive endpoint in the database is moderate thyroid hypertrophy. Liver toxicity accompanied by body weight and food consumption effects is seen throughout the toxicology database. No treatment-related changes indicative of potential immunotoxicity were seen in hematology parameters, organ weights (thymus, spleen), gross necropsy (enlarged lymph nodes) or histopathology (spleen, thymus, lymph nodes) when tested up to the limit dose in mice and rats. Therefore, EPA does not believe that conducting a special series 870.7800 immunotoxicity study will result in a NOAEL less than 75 mg/kg/day, which is presently used as the point of departure for chronic risk assessment.

ii. No neurotoxic effects were observed during the subchronic screening battery or noted as clinical signs in any other repeated-dose study. Although untoward clinical signs were observed in the acute neurotoxicity study, these effects can be attributed to generalized toxicity and were resolved by Day 2 of the study. Based on these considerations, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that imazosulfuron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no significant residual uncertainties in the exposure databases. Data have been requested to confirm the stability of imazosulfuron during frozen storage and the metabolic profile of pyrimidine-labeled imazosulfuron in rice grain in the confined rotational crop trial. A field rotational crop study is also required for grain (wheat); however, as explained in Unit III.D.3.iv.c., EPA does not expect these studies to have a measurable impact on exposure estimates for imazosulfuron.

a. *Storage stability.* The final reports of the storage stability studies must be submitted, reflecting frozen storage intervals of up to 11.8 months for peppers, up to 34.5 months for rice grain, and up to 17.3 months for tomatoes. Interim data suggest that imazosulfuron is stable in frozen storage, and similar sulfonylurea chemicals are known to be stable. Therefore, EPA expects imazosulfuron to be stable in frozen storage but is requiring the final study reports as confirmation.

b. *Metabolic profile.* The HPLC profile for the pyrimidinyl (Py)-label grain storage stability analysis must be submitted to confirm that the metabolite profile was stable in Py-label grain. Grain samples from the confined rotational crop study were stored for a relatively long interval (9 months) prior to completion of the analyses. Analysis of an imidozolyl (Im)-label sample after the 9-month period yielded a metabolic profile similar to that of a sample analyzed at the start of the period. A similar comparison must be made for the Py-label sample of grain. This is of no practical consequence for risk assessment because total residue levels on grain were small (<0.01 ppm at a 365-day plantback interval), imazosulfuron was not present, and no metabolites/degradates were considered toxicologically significant.

c. *Field accumulation in rotational crops (grain).* The grain (wheat) rotational crop study is needed to identify maximum levels of residues in grain and livestock feed items (forage, straw) as a function of the plantback interval. On an interim basis, a plantback interval of 12 months is being required for grains and soybeans. The results of the rotational crop study may allow a shorter plantback interval. The confined rotational crop study showed that imazosulfuron and metabolites will be negligible (<0.01 ppm) on forage, hay, straw, stover, and grain at a 365-day plantback interval and will, therefore, make no contribution to dietary exposure.

The dietary food exposure assessments were performed assuming tolerance-level residues and 100 PCT for all commodities. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to imazosulfuron in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by imazosulfuron.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to imazosulfuron will occupy 1.4% of the aPAD for infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to imazosulfuron from food and water will utilize 2.7% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of imazosulfuron is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Imazosulfuron is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to imazosulfuron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 40,000 for adults and 7,000 for children. For adults, the aggregate MOE includes short-term residential handler inhalation exposure plus chronic dietary exposure to imazosulfuron from food and water. For children, the aggregate MOE includes short-term incidental oral residential exposure plus chronic dietary exposure to imazosulfuron from food and water. Because EPA's level of concern for imazosulfuron is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, imazosulfuron is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for imazosulfuron.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, imazosulfuron is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) Method RM–42C–3) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

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

The Codex has not established a MRL for imazosulfuron.

C. Revisions to Petitioned-For Tolerances

EPA is revising the proposed commodity terms for "pepper, bell, fruit"; "pepper, non-bell, fruit"; and "tomato, fruit"; to read "pepper, bell"; "pepper, non-bell"; and "tomato". The commodity terms have been changed in accordance with the guidance in the Agency's Food and Feed Commodity Vocabulary.

EPA is also revising the requested tolerance expression to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerances cover residues of the herbicide imazosulfuron, including its metabolites and degradates, but that compliance with the tolerance levels is to be determined by measuring only imazosulfuron, 2-chloro-*N*-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]imidazo-[1,2-α]pyridine-3-sulfonamide, in or on the commodities.

V. Conclusion

Therefore, tolerances are established for residues of imazosulfuron, including its metabolites and degradates, in or on pepper, bell at 0.02 ppm; pepper, non-bell at 0.02 ppm; rice, grain at 0.02 ppm; and tomato at 0.02 ppm. Compliance with the tolerance levels is to be determined by measuring only imazosulfuron, 2-chloro-*N*-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]imidazo-[1,2-α]pyridine-3-sulfonamide, in or on the commodities.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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) (Pub. L. 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).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 13, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.651 is added to read as follows:

§ 180.651 Imazosulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide imazosulfuron, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only imazosulfuron, 2-chloro-*N*-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]imidazo-[1,2-α]pyridine-3-sulfonamide, in or on the commodity.

Commodity	Parts per million
Pepper, bell	0.02
Pepper, non-bell	0.02
Rice, grain	0.02
Tomato	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2010–32451 Filed 12–28–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 422, and 495

[CMS–0033–F2]

RIN 0938–AP78

Medicare and Medicaid Programs; Electronic Health Record Incentive Program; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects typographical and technical errors identified in the final rule entitled "Medicare and Medicaid Programs; Electronic Health Record Incentive Program" that appeared in the July 28, 2010 **Federal Register**.

DATES: *Effective Date:* This correcting amendment is effective December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Rachel Maisler, (410) 786–5754.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–17207 (75 FR 44314) the final rule entitled "Medicare and Medicaid Programs; Electronic Health Record Incentive Program" (hereinafter referred to as the Medicare and Medicaid EHR Incentive Program), there were several technical and typographical errors that are identified in the Summary of Errors section and corrected in the Correction of Errors section and in the regulations text of this correcting amendment.

II. Summary of Errors

A. Errors in the Preamble

In the preamble to this final rule, we made the following technical and typographical errors.

On page 44314, in the **FOR FURTHER INFORMATION CONTACT**, we are correcting the contact information for Medicaid incentive payment issues for better accuracy.

On page 44337, in our response to a comment on the objective generate and transmit permissible prescriptions electronically, we inadvertently referenced only the restrictions established by the Department of Justice (DOJ) on electronic prescribing for controlled substances in Schedule II, when in fact we meant to include Schedule II–V. We intended to encompass all prescriptions where e-prescribing is not permitted, so we are including Schedules III–V. At the time of the publication of the our January 13, 2010 proposed rule, the Drug Enforcement Agency (DEA) had not published its March 31, 2010 final rule (75 FR 16236) on the electronic prescribing of controlled substances. We are aligning our regulation with the DEA regulations regarding electronic prescribing of controlled substances by adding schedules II–V so that we are in line with DEA regulation.

On page 44351, in our discussion of the proposed rule EP/Eligible Hospital Measure, we erroneously referred to "five rules" related to clinical decision support although we reduced that requirement to one rule.

On page 44359, in our response to a comment regarding charging fees, we inadvertently omitted a word. Also, in our discussion of the numerator and denominator for the clinical summary objective, we inadvertently referred to unique patients, rather than to office visits. As the measure for this objective relies on office visits (*see* § 495.6(d)(13)), we are correcting the preamble to also refer to office visits. We have also eliminated a reference in the preamble to eligible hospitals and CAHs in the threshold for this objective, as the objective applies only to EPs.

On pages 44440 and 44442, we are revising our discussions of hospital-based EPs, so that they correctly refer to EPs that furnish "90 percent or more," (rather than "more than 90 percent") of their covered professional services in an inpatient or emergency department setting. This is in keeping with the definition in § 495.4.

On page 44487, we are correcting the preamble to more precisely state that the 90-day period for deriving hospitals' patient volume is based on the preceding fiscal year. This is in keeping with § 495.306, which specifically references the fiscal year.

Also, on page 44487 and page 44488 we inadvertently referred to hospitals when discussing the patient panel methodology for estimating Medicaid patient volume. As the patient panel methodology will be used only by EPs (and as our regulation cites only to EPs when discussing the patient panel methodology—*see* § 495.306(d)), we are eliminating the references to hospitals.

On page 44488, we incorrectly included "unduplicated Medicaid encounters" in the last sentence, instead of "unduplicated encounters." This correction allows for us to keep the numerator and denominator consistent when determining the Medicaid patient volume.

On pages 44499, 44518, 44549, and 44562, we made typographical errors which include errors in mathematical symbols, column headings, and the numbering and referencing of tables.

B. Errors in the Regulation Text

On page 44568, in § 495.6(d)(14)(i), we erroneously omitted medication allergies in the list of examples. Therefore, we are including this reference to be consistent with the preamble of the July 28, 2010 final rule.

On page 44568, in § 495.6(e)(1), we inadvertently omitted a reference to the exclusion for any EP who writes fewer than 100 prescriptions during the EHR reporting period (as discussed in the preamble of the final rule (see page 44336)). Therefore, we are correcting § 495.6(e)(1) by referencing this exclusion in accordance with § 495.6(a)(2) "Implement drug-formulary checks."

On page 44587, in § 495.366(b)(3), we made inadvertent errors by citing to inpatient and outpatient settings, rather than the inpatient or emergency room settings in a discussion of "hospital-based."

On page 44588, in § 495.368(c) regarding overpayments, we are correcting the period of consideration for overpayments. We note that section 1903(d)(2) of the Act was amended by section 6506 of the Patient Protection and Affordable Care Act (known as the Affordable Care Act (ACA)). This amendment changed the mandatory time period for collection of overpayments from 60 days to 1 year. Therefore, we are correcting § 495.368(c) to implement this statutory change.

III. Correction of Errors in the Preamble

In FR Doc. 2010–17207 of July 28, 2010, we make the following corrections:

1. On page 44314, in the first column, **FOR FURTHER INFORMATION CONTACT** section, lines 3 and 4 the phrase, "Edward Gendron, (410) 786–1064, Medicaid incentive payment issues," is corrected to read "Jessica Kahn, (410) 786–9361, and Michelle Mills, (410) 786–3854, Medicaid incentive program issues.

2. On page 44337,

a. Second column, last paragraph, last line, the phrase "Schedule II" is corrected to read "Schedule II–V."

b. Third column, first partial paragraph,

(1) Line 1, the phrase "Schedule II" is corrected to read "Schedule II–V."

(2) Line 20 the phrase "Schedule II" is corrected to read "Schedule II–V."

3. On page 44351, in the first column, fifth paragraph, lines 5 through 11, the sentence "Therefore, we revise this measure to require that at least one of the five rules be related to a clinical quality measure, assuming the EP, eligible hospital or CAH has at least one clinical quality measure relevant to their scope of practice." is corrected to read "In light of the decision to limit the objective to one clinical decision support rule, we do not believe it is appropriate to further link that rule to a specific clinical quality measure."

4. On page 44359,

a. First column, first partial paragraph, line 6, "generated certified EHR technology." is corrected to read "generated by certified EHR technology."

b. Second column, second full paragraph, lines 4 through 16, the bulleted text beginning with term "Denominator" and ending with phrase "meet this measure" is corrected to read as follows:

- *Denominator:* Number of office visits by the EP during the EHR reporting period.
- *Numerator:* Number of office visits in the denominator for which the patient is provided a clinical summary within 3 business days."
- *Threshold:* The resulting percentage must be more than 50 percent in order for an EP to meet this measure."

5. On page 44367, third column, seventh full paragraph, last line, the term "ferquency" is corrected to read "frequency."

6. On page 44440, second column, last paragraph, lines 11 and 12, the phrase "if more than 90 percent" is corrected to read "if 90 percent or more."

7. On page 44442, in the first column, first full paragraph, lines 9 and 10, the phrase "if more than 90 percent" is corrected to read "if 90 percent or more."

8. On page 44487,

a. Top half of the page, second column, third full paragraph, line 13, the phrase "in the preceding calendar year" is corrected to read "in the preceding calendar year (fiscal year for hospitals)."

b. Bottom half of the page, third column, last paragraph, lines 4 and 5, the phrase "individual hospital's or EP's" is corrected to read "individual EP's."

9. On page 44488, in the first column, first partial paragraph, line 20, the phrase "or hospital" is deleted. Line 25, the phrase, "unduplicated Medicaid encounters" is corrected to read "unduplicated encounters."

10. On page 44499, in the middle of the page, in Table 19: Hospital Incentives, second column, the column heading, "CY" is corrected to read "FY."

11. On page 44518, in first column, first full paragraph, line 23 the figure "−4,675,161" is corrected to read "4,675,161."

12. On page 44549, in the third column, first partial paragraph, line 10, the reference "Table 51," is corrected to read "Table 38."

13. On page 44562, second fourth of the page, in the table heading, the table number "TABLE 51" is corrected to read "TABLE 38:".

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA also ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

With the exception of the correction to § 495.368(c), the changes made by this notice do not constitute agency rulemaking, and therefore the 60 day comment period and delayed effective date do not apply. This correction notice merely corrects typographical and technical errors in the EHR incentive program final rule and does not make substantive changes to the July 28, 2010 final rule that would require additional time on which to comment or a delay in effective date. Instead, this correction notice is intended to ensure the accuracy of the final rule.

In addition, even if the notice and comment and delayed effective date procedures applied, we find good cause to waive such procedures. Undertaking further notice and comment procedures to incorporate the corrections in this notice into the final rule or delaying the effective date would delay these corrections beyond the date necessary for EPs, eligible hospitals and CAHs to begin receiving incentive payments, and would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule. The one change we are making, to § 495.368(c), is necessary to comply with a provision of the Affordable Care Act that is already in effect; thus, we find it would be both unnecessary and impracticable to subject such change to a comment period as well as any delay in effective date.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 495

Administrative practice and procedure, Electronic health records, Health facilities, Health professions, Health maintenance organizations (HMO), Medicaid, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicare Services amends 42 CFR part 495 as follows:

PART 495—STANDARDS FOR THE ELECTRONIC HEALTH RECORD TECHNOLOGY INCENTIVE PROGRAM

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

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 495.6 is amended as follows:

■ A. In paragraph (d)(14)(i), remove the parenthetical phrase "(for example, problem list, medication list, allergies, and diagnostic test results)" and add the parenthetical phrase "(for example, problem list, medication list, medication allergies, and diagnostic test results)" in its place.

■ B. Add paragraph (e)(1)(iii) to read as follows:

§ 495.6 Meaningful use objectives and measures for EPs, eligible hospitals, and CAHs.

* * * * *

(e) * * *

(1) * * *

(iii) *Exclusion in accordance with paragraph (a)(2) of this section.* Any EP who writes fewer than 100 prescriptions during the EHR reporting period.

* * * * *

§ 495.366 [Amended]

■ 3. Amend § 495.366(b)(3) by removing the phrase "furnished in a hospital setting, either inpatient or outpatient." and adding the phrase "furnished in a hospital inpatient or emergency room setting." in its place.

§ 495.368 [Amended]

■ 4. Amend 495.368(c) by removing the phrase "60 days" and adding the phrase "1 year" in its place.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 22, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2010–32861 Filed 12–28–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

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

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Madison (FEMA Docket No.: B–1124).	Unincorporated areas of Madison County (08–04–4212P).	March 26, 2010; April 2, 2010; *Madison County Record*.	The Honorable Mike Gillespie, Chairman, Madison County Commission, 100 Northside Square, Huntsville, AL 35801.	August 2, 2010	010151
Arizona: Yavapai (FEMA Docket No.: B–1124).	Unincorporated areas of Yavapai County (09–09–0953P).	April 14, 2010; April 21, 2010; *Prescott Daily Courier*.	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	August 19, 2010	040093
California:					
Sonoma (FEMA Docket No.: B–1124).	City of Healdsburg (09–09–2125P).	April 14, 2010; April 21, 2010; *The Press Democrat*.	The Honorable Jim Wood, Mayor, City of Healdsburg, 401 Grove Street, Healdsburg, CA 95448.	August 19, 2010	060378
Sonoma (FEMA Docket No.: B–1124).	Unincorporated areas of Sonoma County (09–09–2125P).	April 14, 2010; April 21, 2010; *The Press Democrat*.	The Honorable Valerie Brown, Chair, Sonoma County Board of Supervisors, 575 Administration Drive, Santa Rosa, CA 95403.	August 19, 2010	060375
Colorado: Arapahoe (FEMA Docket No.: B–1124).	Unincorporated areas of Arapahoe County (10–08–0186P).	April 9, 2010; April 16, 2010; *The Denver Post*.	The Honorable Rod Bockenfeld, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	August 16, 2010	080011
Florida:					
Monroe (FEMA Docket No.: B–1129).	Unincorporated areas of Monroe County (10–04–1955P).	April 30, 2010; May 7, 2010; *Key West Citizen*.	The Honorable Mario Digennaro, District 4 Commissioner, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	April 28, 2010	125129
Monroe (FEMA Docket No.: B–1129).	Unincorporated areas of Monroe County (10–04–2350P).	April 30, 2010; May 7, 2010; *Key West Citizen*.	The Honorable Mario Digennaro, District 4 Commissioner, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	April 26, 2010	125129
Osceola (FEMA Docket No.: B–1123).	City of St. Cloud (09–04–6066P).	March 25, 2010; April 1, 2010; *Osceola News-Gazette*.	The Honorable Donna Hart, Mayor, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769.	July 30, 2010	120191
Polk (FEMA Docket No.: B–1123).	Unincorporated areas of Polk County (09–04–8238P).	March 31, 2010; April 7, 2010; *Polk County Democrat*.	The Honorable Bob English, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	August 5, 2010	120261
Illinois:					
St. Clair (FEMA Docket No.: B–1124).	City of O'Fallon (07–05–2498P).	April 15, 2010; April 22, 2010; *O'Fallon Progress*.	The Honorable Gary L. Graham, Mayor, City of O'Fallon, 255 South Lincoln Avenue, O'Fallon, IL 62269.	August 19, 2010	170633
St. Clair (FEMA Docket No.: B–1124).	Unincorporated areas of St. Clair County (07–05–2498P).	April 15, 2010; April 22, 2010; *O'Fallon Progress*.	The Honorable Mark Kern, Chairman, St. Clair County Board, 10 Public Square, 5th Floor, Belleville, IL 62220.	August 19, 2010	170616
Will (FEMA Docket No.: B–1123).	Village of Mokena (09–05–4682P).	March 25, 2010; April 1, 2010; *Mokena Messenger*.	The Honorable Joseph W. Werner, Mayor, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	July 30, 2010	170705
Will (FEMA Docket No.: B–1123).	Village of Romeoville (09–05–4629P).	March 25, 2010; April 1, 2010; *The Herald News*.	The Honorable John Noak, Mayor, Village of Romeoville, 13 Montrose Drive, Romeoville, IL 60446.	July 30, 2010	170711
Will (FEMA Docket No.: B–1123).	Unincorporated areas of Will County (09–05–4629P).	March 25, 2010; April 1, 2010; *The Herald News*.	The Honorable Lawrence M. Walsh, Chairman, Will County Board of Supervisors, 302 North Chicago Street, Joliet, IL 60432.	July 30, 2010	170695
Nevada:					
Washoe (FEMA Docket No.: B–1124).	City of Reno (09–09–3152P).	April 6, 2010; April 13, 2010; *Reno Gazette-Journal*.	The Honorable Robert Cashell, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	August 11, 2010	320020
Washoe (FEMA Docket No.: B–1124).	Unincorporated areas of Washoe County.	April 6, 2010; April 13, 2010; *Reno Gazette-Journal*.	The Honorable David Humke, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	August 11, 2010	320019
North Carolina:					
Iredell (FEMA Docket No.: B–1124).	Town of Mooresville (09–04–7593P).	April 2, 2010; April 9, 2010; *Mooresville Tribune* and *The Charlotte Observer*.	The Honorable Bill Thunberg, Mayor, Town of Mooresville, P.O. Box 878, Mooresville, NC 28115.	August 9, 2010	370314
Richmond (FEMA Docket No.: B–1124).	Unincorporated areas of Richmond County (09–04–8322P).	April 7, 2010; April 14, 2010; *Richmond County Daily Journal*.	Mr. Kenneth R. Robinette, Chairman, Richmond County Board of Commissioners, P.O. Box 504, Rockingham, NC 28380.	August 12, 2010	370348
Stanly (FEMA Docket No.: B–1124).	Unincorporated areas of Stanly County (09–04–5837P).	March 25, 2010; April 1, 2010; *Stanly News & Press*.	Mr. Tony M. Dennis, Stanly County Chairman, 1000 North 1st Street, Suite 13–B, Albemarle, NC 28001.	July 30, 2010	370361

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Tulsa (FEMA Docket No.: B–1124).	City of Sand Springs (10–06–0758P).	April 14, 2010; April 21, 2010; *Sand Springs Leader*.	The Honorable Bob Walker, Mayor, City of Sand Springs, P.O. Box 338, Sand Springs, OK 74063.	March 31, 2010	400211
Tennessee: Lincoln (FEMA Docket No.: B–1124).	Unincorporated areas of Lincoln County (08–04–4212P).	March 24, 2010; March 31, 2010; *The Elk Valley Times*.	The Honorable Peggy G. Bevels, Mayor, Lincoln County, 112 Main Avenue South, Room 101, Fayetteville, TN 37334.	August 2, 2010	470104
Texas:					
Bexar (FEMA Docket No.: B–1123).	City of San Antonio (08–06–2113P).	March 31, 2010; April 7, 2010; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	April 22, 2010	480045
Bexar (FEMA Docket No.: B–1123).	City of San Antonio (09–06–2177P).	March 19, 2010; March 26, 2010; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	April 7, 2010	480045
Utah: Weber (FEMA Docket No.: B–1123).	City of Ogden (09–08–0418P).	March 19, 2010; March 26, 2010; *Ogden Standard-Examiner*.	The Honorable Matthew R. Godfrey, Mayor, City of Ogden, 2549 Washington Boulevard, Suite 910, Ogden, UT 84401.	July 26, 2010	490189

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

Sandra K. Knight,

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

[FR Doc. 2010–32707 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1157]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Delaware: Sussex	Unincorporated areas of Sussex County (10–03–0270P).	June 16, 2010; June 23, 2010; *Sussex Countian.*	Mr. Vance Phillips, Council President, Sussex County, P.O. Box 589, Georgetown, DE 19947.	October 21, 2010	100029
New York: Oneida	City of Sherrill (10–02–0242P).	June 10, 2010; June 17, 2010; *The Oneida Daily Dispatch.*	The Honorable Joseph P. Shay, Mayor, City of Sherrill, 377 Sherrill Road, Sherrill, NY 13461.	December 3, 2010	360544
North Carolina: Richmond.	Unincorporated areas of Richmond County (10–04–5289P).	August 6, 2010; August 13, 2010; *Richmond County Daily Journal.*	Mr. Kenneth R. Robinette, Chairman, Richmond County Board of Commissioners, P.O. Box 504, Rockingham, NC 28380.	July 30, 2010	370348
North Carolina: Granville.	Unincorporated areas of Granville County (10–04–4713P).	August 5, 2010; August 12, 2010; *The Oxford Public Ledger* and *The Butner-Creedmoor News.*	Mr. Brian Alligood, Granville County Manager, P.O. Box 906, Oxford, NC 27565.	December 10, 2010	370325
Texas: Denton	City of Lewisville (10–06–0364P).	June 9, 2010; June 16, 2010; *Lewisville Leader.*	The Honorable Dean Ueckert, Mayor, City of Lewisville, 151 West Church Street, Lewisville, TX 75029.	June 28, 2010	480195
Texas: Williamson	City of Georgetown (10–06–0373P).	July 7, 2010; July 14 2010; *The Williamson County Sun.*	The Honorable George Garver, Mayor, City of Georgetown, P.O. Box 409, Georgetown, TX 78627.	November 11, 2010	480668

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

Dated: December 10, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–32701 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

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

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility

Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Shelby (FEMA Docket No.: B–1123).	Town of Calera (09–04–0261P).	March 24, 2010; March 31, 2010; *Shelby County Reporter*.	The Honorable George W. Roy, Mayor, Town of Calera, P.O. Box 177, Calera, AL 35040.	July 29, 2010	010373
Shelby (FEMA Docket No.: B–1123).	Unincorporated areas of Shelby County (09–04–0261P).	March 24, 2010; March 31, 2010; *Shelby County Reporter*.	The Honorable Lindsey Allison, Chairperson, Shelby County Commission, P.O. Box 467, Columbiana, AL 35051.	July 29, 2010	010191
Arizona:					
Maricopa (FEMA Docket No.: B–1123).	City of Glendale (09–09–2335P).	March 18, 2010; March 25, 2010; *Arizona Business Gazette*.	The Honorable Elaine M. Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301.	July 23, 2010	040045
Maricopa (FEMA Docket No.: B–1123).	Unincorporated areas of Maricopa County (09–09–2335P).	March 18, 2010; March 25, 2010; *Arizona Business Gazette*.	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	July 23, 2010	040037
California: Riverside (FEMA Docket No.: B–1123).	City of Perris (10–09–0106P).	March 31, 2010; April 7, 2010; *The Perris Progress*.	The Honorable Daryl R. Busch, Mayor, City of Perris, 101 North D Street, Perris, CA 92570.	July 29, 2010	060258
Florida:					
Duvall (FEMA Docket No.: B–1118).	City of Jacksonville (10–04–1198P).	March 5, 2010; March 12, 2010; *Jacksonville Daily Record*.	The Honorable John Peyton, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202.	July 9, 2010	120077
Volusia (FEMA Docket No.: B–1123).	City of Deltona (09–04–1747P).	March 22, 2010; March 29, 2010; *The Beacon*.	The Honorable Dennis Mulder, Mayor, City of Deltona, 2345 Providence Boulevard, Deltona, FL 32725.	July 27, 2010	120677
Georgia:					
Catoosa (FEMA Docket No.: B–1123).	City of Ringgold (09–04–6882P).	March 24, 2010; March 31, 2010; *The Catoosa County News*.	The Honorable Joe Barger, Mayor, City of Ringgold, 150 Tennessee Street, Ringgold, GA 30736.	July 29, 2010	130029
Catoosa (FEMA Docket No.: B–1123).	Unincorporated areas of Catoosa County (09–04–6882P).	March 24, 2010; March 31, 2010; *The Catoosa County News*.	The Honorable Keith Greene, Chairman, Catoosa County Board of Commissioners, 800 Lafayette Street, Ringgold, GA 30736.	July 29, 2010	130028
Columbia (FEMA Docket No.: B–1123).	Unincorporated areas of Columbia County (09–04–4792P).	March 14, 2010; March 21, 2010; *The Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	July 19, 2010	130059
Mississippi:					
DeSoto (FEMA Docket No.: B–1079).	Unincorporated areas of DeSoto County, (09–04–2542P).	August 11, 2009; August 18, 2009; *DeSoto Times-Tribune*.	The Honorable Tommy Lewis, President, DeSoto County Board of Supervisors, 365 Losher Street, Suite 310, Hernando, MS 38632.	December 16, 2009	280050
DeSoto (FEMA Docket No.: B–1079).	City of Olive Branch (09–04–2542P).	August 11, 2009; August 18, 2009; *DeSoto Times-Tribune*.	The Honorable Samuel P. Rikard, Mayor, City of Olive Branch, 9200 Pigeon Roost Road, Olive Branch, MS 38654.	December 16, 2009	280286
Rankin (FEMA Docket No.: B–1123).	City of Brandon (09–04–6879P).	March 31, 2010; April 7, 2010; *Rankin County News*.	The Honorable Tim Coulter, Mayor, City of Brandon, P.O. Box 1539, Brandon, MS 39043.	March 25, 2010	280143
Rankin (FEMA Docket No.: B–1123).	Unincorporated areas of Rankin County (09–04–6879P).	March 31, 2010; April 7, 2010; *Rankin County News*.	The Honorable Jay Bishop, Chair, Rankin County Board of Supervisors, 211 East Government Street, Suite A, Brandon, MS 39042.	March 25, 2010	280142
Ohio:					
Franklin (FEMA Docket No.: B–1123).	City of Columbus (09–05–4021P).	March 12, 2010; March 19, 2010; *The Columbus Dispatch*.	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Columbus, OH 43215.	July 19, 2010	390170
Franklin (FEMA Docket No.: B–1123).	City of Whitehall (09–05–4021P).	March 12, 2010; March 19, 2010; *The Columbus Dispatch*.	The Honorable John A. Wolfe, Mayor, City of Whitehall, 360 South Yearling Road, Whitehall, OH 43213.	July 19, 2010	390180
Warren (FEMA Docket No.: B–1129).	City of Mason (08–05–5005P).	March 11, 2010; March 18, 2010; *The Western Star*.	The Honorable Charlene Pelfrey, Mayor, City of Mason, 6000 Mason-Montgomery Road, Mason, OH 45040.	July 16, 2010	390559

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Warren (FEMA Docket No.: B–1123).	City of Monroe (09–05–1088P).	March 5, 2010; March 12, 2010; *The Middletown Journal*.	The Honorable Robert Routson, Mayor, City of Monroe, P.O. Box 330, Monroe, OH 45050.	July 9, 2010	390042
Warren (FEMA Docket No.: B–1129).	Unincorporated areas of Warren County (08–05–5005P).	March 11, 2010; March 18, 2010; *The Western Star*.	The Honorable David G. Young, President, Warren County Board of Commissioners, 406 Justice Drive, 1st Floor, Lebanon, OH 45036.	July 16, 2010	390757
Oregon: Linn (FEMA Docket No.: B–1121).	City of Millersburg (09–10–0354P).	February 26, 2010; March 5, 2010; *Democrat-Herald*.	The Honorable Clayton Wood, Mayor, City of Millersburg, 4222 Northeast Old Salem Road, Albany, OR 97321.	July 2, 2010	410284
Tennessee:					
Madison (FEMA Docket No.: B–1123).	Unincorporated areas of Madison County (09–04–3077P).	March 10, 2010; March 17, 2010; *Jackson Sun*.	The Honorable Jimmy Harris, Mayor, Madison County, 100 East Main Street, Suite 302, Jackson, TN 38301.	July 15, 2010	470112
Rutherford (FEMA Docket No.: B–1124).	City of Murfreesboro (09–04–3567P).	April 2, 2010; April 9, 2010; *Daily News Journal*.	The Honorable Tommy Bragg, Mayor, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37133.	April 23, 2010	470168
Rutherford (FEMA Docket No.: B–1124).	Unincorporated areas of Rutherford County (09–04–3567P).	April 2, 2010; April 9, 2010; *Daily News Journal*.	The Honorable Ernest Burgess, Mayor, Rutherford County, County Courthouse, Room 101, Murfreesboro, TN 37130.	April 23, 2010	470165
Texas:					
Comal & Guadalupe (FEMA Docket No.: B–1118).	City of Schertz (09–06–2056P).	March 11, 2010; March 18, 2010; *Northeast Herald*.	The Honorable Hal Baldwin, Mayor, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154.	July 16, 2010	480269
Comal and Guadalupe (FEMA Docket No.: B–1118).	City of Selma (09–06–2056P).	March 11, 2010; March 18, 2010; *Northeast Herald*.	The Honorable Jim Parma, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	July 16, 2010	480046
Gregg (FEMA Docket No.: B–1118).	City of Longview (09–06–1728P).	March 5, 2010; March 12, 2010; *Longview News-Journal*.	The Honorable Jay Dean, Mayor, City of Longview, P.O. Box 1952, Longview, TX 75606.	July 12, 2010	480264

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

Dated: December 7, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–32700 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

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

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Pima (FEMA Docket No.: B–1129).	Town of Marana (09–09–0233P).	April 29, 2010; May 6, 2010; *The Daily Territorial*.	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	September 3, 2010	040118
Pima (FEMA Docket No.: B–1129).	Unincorporated areas of Pima County (09–09–0233P).	April 29, 2010; May 6, 2010; *The Daily Territorial*.	The Honorable Richard Elias, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, AZ 85701.	September 3, 2010	040073
Pima (FEMA Docket No.: B–1129).	Unincorporated areas of Pima County (09–09–2406P).	May 7, 2010; May 14, 2010; *The Daily Territorial*.	The Honorable Richard Elias, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, AZ 85701.	September 13, 2010	040073
California:					
Amador (FEMA Docket No.: B–1129).	City of Ione (09–09–0177P).	May 7, 2010; May 14, 2010; *Amador Leader Dispatch*.	The Honorable Skip Schaufel, Mayor, City of Ione, 1 East Main Street, Ione, CA 95640.	September 13, 2010	060016
Colorado:					
Adams and Jefferson (FEMA Docket No.: B–1129).	City of Westminster (10–08–0363P).	May 6, 2010; May 13, 2010; *Westminster Window*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	September 10, 2010	080008
El Paso (FEMA Docket No.: B–1124).	City of Colorado Springs (10–08–0386P).	April 14, 2010; April 21, 2010; *The Gazette*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	August 19, 2010	080060
Florida:					
Lake (FEMA Docket No.: B–1129).	Unincorporated areas of Lake County (09–04–7272P).	May 6, 2010; May 13, 2010; *Daily Commercial*.	The Honorable Jennifer Hill, Commissioner, District 1, P.O. Box 7800, Tavares, FL 32778.	September 10, 2010	120421
Lee (FEMA Docket No.: B–1124).	Unincorporated areas of Lee County (10–04–2746P).	April 16, 2010; April 23, 2010; *The News-Press*.	The Honorable Tammy Hall, Chairperson, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	March 31, 2010	125124
St. Johns (FEMA Docket No.: B–1129).	Unincorporated areas of St. Johns County (09–04–2501P).	April 26, 2010; May 3, 2010; *St. Augustine Record*.	Mr. Michael Wanchick, St. Johns County Administrator, 500 San Sebastian View, St. Augustine, FL 32084.	August 31, 2010	125147
Hawaii: Hawaii (FEMA Docket No.: B–1124)	Unincorporated areas of Hawaii County (09–09–1398P).	April 16, 2010; April 23, 2010; *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	August 23, 2010	155166
Missouri:					
St. Louis (FEMA Docket No.: B–1129).	City of Chesterfield (09–07–1764P).	May 3, 2010; May 10, 2010; *The Countian*.	The Honorable John Nations, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	September 7, 2010	290896
St. Louis (FEMA Docket No.: B–1129).	City of Clarkson Valley (09–07–1764P).	May 3, 2010; May 10, 2010; *The Countian*.	The Honorable Scott Douglass, Mayor, City of Clarkson Valley, City Hall, P.O. Box 987, Chesterfield, MO 63006.	September 7, 2010	290340
St. Louis (FEMA Docket No.: B–1129).	City of Wildwood (09–07–1764P).	May 3, 2010; May 10, 2010; *The Countian*.	The Honorable Tim Woerther, Mayor, City of Wildwood, 183 Plaza Drive, Wildwood, MO 63040.	September 7, 2010	290922
Nevada: Douglas (FEMA Docket No.: B–1129)	Unincorporated areas of Douglas County (09–09–2705P).	April 30, 2010; May 7, 2010; *Record Courier*.	The Honorable Michael A. Olson, Chairman, Douglas County Board of Commissioners, 3605 Silverado Drive, Carson City, NV 89705.	September 7, 2010	320008

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Oklahoma (FEMA Docket No.: B–1129)	City of Del City (09–06–1014P).	May 6, 2010; May 13, 2010; *The Oklahoman*.	The Honorable Brian Linley, Mayor, City of Del City, P.O. Box 15177, Del City, OK 73155.	September 10, 2010	400233
Texas:					
Montgomery (FEMA Docket No.: B–1124).	Unincorporated areas of Montgomery County (09–06–2479P).	April 14, 2010; April 21, 2010; *The Courier*.	The Honorable Alan B. Sadler, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	August 19, 2010	480483
Tarrant (FEMA Docket No.: B–1124).	City of Keller (09–06–2005P).	April 14, 2010; April 21, 2010; *The Keller Citizen*.	The Honorable Pat McGrail, Mayor, City of Keller, 1100 Bear Creek Parkway, Keller, TX 76248.	August 19, 2010	480602

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

Dated: December 10, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–32703 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, and 307

Safeguarding Child Support Information

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created and expanded State and Federal Child Support Enforcement databases under title IV–D of the Social Security Act (the Act) and significantly enhanced access to information for title IV–D child support purposes. States are moving toward a more integrated service delivery to better serve families and further the mission of the Child Support Enforcement program, while protecting confidential data. This final rule specifies requirements for: State Parent Locator Service responses to authorized location requests; and State Child Support Enforcement program safeguards for confidential information and authorized disclosures of this information. This final rule revises certain aspects of the State Parent Locator Service; Safeguarding Child Support Information final rule published on September 26, 2008 with an effective date delayed until December 30, 2010. This final rule will prohibit the disclosure of confidential and personally identifiable information to private collection agencies and expand disclosure to child welfare programs and the Supplemental Nutrition Assistance Program (SNAP).

DATES: This rule is effective on December 30, 2010.

FOR FURTHER INFORMATION CONTACT: Paige Hausburg, OCSE, Division of Policy, (202) 401–5635, e-mail *paige.hausburg@acf.hhs.gov*. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 5 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This final rule is published under the authority granted to the Secretary of the United States Department of Health and Human Services (Secretary) by sections 1102, 453, 453A, 454, 454A, and 463 of the Act. Section 1102 of the Act, 42 U.S.C. 1302, authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the Child Support Enforcement program authorized under title IV–D of the Act (IV–D program).

The provisions of this final rule pertaining to the Federal Parent Locator Service (Federal PLS) implement section 453 of the Act, 42 U.S.C. 653. Section 453 requires the Secretary to establish and conduct a Federal PLS to obtain and transmit specified information only to authorized persons for purposes of establishing parentage, or establishing, modifying, or enforcing child support obligations. Section 453 of the Act, 42 U.S.C. 653, also authorizes the Secretary to disclose information in the Federal PLS to the State Child Support Enforcement program (authorized under title IV–D of the Act), Temporary Assistance for Needy Families program (TANF or IV–A program authorized under title IV–A of the Act), Child Welfare Services program (IV–B program authorized under title IV–B of the Act), and Foster Care and Adoption Assistance program (IV–E program authorized under title IV–E of the Act) to assist States in carrying out their responsibilities under those programs. Section 463 of the Act, 42 U.S.C. 663, also permits States to use information in the Federal PLS for the purpose of enforcing any Federal or State law with respect to a parental kidnapping or making or enforcing a child custody or visitation determination. In addition, the provisions of this final rule pertaining to the State Parent Locator Service (State PLS) implement section 454(8), 42 U.S.C. 654(8), which requires each State IV–D program to establish a State PLS to locate parents by exchanging data with the Federal PLS and utilizing other information sources and records in the State.

Several sections of the Act require safeguarding measures for information contained in State and Federal databases, including the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR). Section 454(8) requires States receiving funding under title IV–D to have a State plan providing that the State IV–D program will: (1) Establish a service to locate parents utilizing all sources of information and available records and the Federal PLS; and (2) disclose the information described in sections 453 and 463 only to the "authorized persons" specified in sections 453 and 463, subject to the privacy safeguards in section 454(26) of the Act. In addition, sections 453(m) and 463(c) restrict disclosure of confidential information maintained by the Federal PLS only to an "authorized person" for an authorized purpose and require the Secretary to establish and implement safeguards designed to restrict access to confidential information in the Federal PLS to authorized persons for authorized purposes. Section 453(l), 42 U.S.C. 653(l), also specifies that information in the Federal PLS shall not be used or disclosed except as expressly provided in section 453. Section

454(26), 42 U.S.C. 654(26), requires the State IV–D agency to have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties and prohibit disclosure of information in cases involving domestic violence or child abuse. Section 453A of the Act, 42 U.S.C. 653a, requires States to establish and operate an automated directory containing information on newly hired employees and to use the information to assist in the administration of the State Child Support program and certain other specified programs listed in section 453A(h) of the Act. Additionally, sections 454(16) and 454A, 42 U.S.C. 654(16) and 654a, require States to maintain computerized child support enforcement systems and to use the system to extract information necessary to enable the State IV–D agency (and other programs designated by the Secretary) to carry out their responsibilities under title IV–D of the Act and under such programs, and to have in effect safeguards on the access to and use of data in the State's automated system.

II. Background

This final rule prohibits disclosure of confidential and personally identifiable information to private collection agencies (PCAs) and expands disclosure of information to child welfare programs authorized under titles IV–B and IV–E and the Supplemental Nutrition Assistance Program (SNAP). On September 26, 2008, a final rule, following a notice and comment period, entitled "State Parent Locator Service; Safeguarding Child Support Information," was published in the **Federal Register** [73 FR 56422] to address requirements for State Parent Locator Service responses to authorized location requests, State IV–D program safeguarding of confidential information, authorized disclosures of this information, and restrictions on the use of confidential data and information for child support purposes with exceptions for certain disclosures permitted by statute. The effective date given for the final rule was March 23, 2009. In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff entitled "Regulatory Review" [74 FR 4435], on March 3, 2009, the Department published a notice in the **Federal Register** [74 FR 9171] seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled "State Parent Locator Service; Safeguarding Child Support Information." In response to those comments, the Department issued a subsequent notice published in the **Federal Register** [74 FR 11879] on March 20, 2009, which delayed the effective date of the September 26, 2008 rule by 60 days until May 22, 2009, in order to permit Departmental officials the opportunity for further review of the issues of law and policy raised by this rule. However, subsequent to publication of the March 20, 2009 notice, the Department determined that additional time would be needed for officials to complete their review of the rule and to fully assess the substantive comments received in response to the March 3, 2009 notice. As a result, on April 15, 2009, a notice was published in the **Federal Register** [74 FR 17445] indicating that the Department was contemplating a further delay in the effective date of the "State Parent Locator Service; Safeguarding Child Support Information" final rule to December 30, 2010, and requesting comments on the delay of the effective date. In response to comments from the April 15, 2009 notice, the Department issued a subsequent notice, published in the **Federal Register** [74 FR 23798] on May 21, 2009 delaying the effective date of the September 26, 2008 rule to December 30, 2010.

Although the March 3, 2009 and the April 15, 2009 notices invited comments on whether a delay in the rule's effective date was needed "to allow Departmental officials the opportunity for further review and consideration," both notices also generated focused substantive comments recommending changes to several particular provisions of the final rule that warranted further consideration. In addition to supporting a delay in the effective date of the rule, the comments raised specific policy concerns regarding two areas of the September 26, 2008 final rule: (1) The rules for disclosure of confidential and personally identifiable information about individuals maintained by State IV–D programs to a private, for-profit child support collection agency as an "agent of a child;" and (2) the child welfare data exchange provisions of the rules in light of legislation enacted in October 2008 after publication of the final rule.

With respect to disclosure of information to private collection agencies, concerns have been raised by commenters, Departmental officials, media coverage, litigation and program stakeholders that the government's disclosure of confidential information to private child support collection agencies may not serve the children's best interests. Specific concerns have been raised about the risks involved in disclosing confidential data to private collection agencies not acting as a State's agent under a contractual relationship nor required to comply with ethics and confidentiality rules such as those governing State agencies and private attorneys, and whose business practices are largely unregulated and not subject to program oversight.

Additionally, commenters on the March 3 and April 15, 2009 notices stated that a delay in the effective date would give the Administration an opportunity to conduct a review of the child welfare data exchange provisions to ensure that the provisions of the rule conform to *The Fostering Connections to Success and Increasing Adoptions Act* (Pub. L. 110–351), (the Fostering Connections Act) signed into law on October 7, 2008, eleven days after the Safeguarding Final Rule was published.

On June 7, 2010, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** [75 FR 32145] which proposed limited changes to the final regulation published on September 26, 2008 to address concerns identified by Department officials as well as those raised by commenters. Only selected portions of the "State Parent Locator; Safeguarding Child Support Information" final rule were addressed in the NPRM. The final rule published on September 26, 2008, in [73 FR 56442] will go into effect on December 30, 2010.

III. Summary Description of Regulatory Provisions

The following is a summary of the regulatory provisions included in this final rule. The NPRM limited those sections of the final rule published on September 26, 2008 that were open for public comment. Affected sections include §§ 301.1, 302.35, 303.21, 303.69, 303.70, and 307.13. Additionally, we made a conforming change to § 303.20, which did not appear in the NPRM.

The Section-by-Section Discussion of the Regulations (Section IV) provides a detailed listing of the comments and responses. We considered each comment and where appropriate, amended the final rule. Specifically, changes include:

In § 301.1 we added a definition of "attorney of a child." Commenters recommended a definition that requires the assurance of a genuine attorney-client relationship which creates an ethical obligation to represent the best interests of the child and/or the child's resident parent. The newly-added definition specifies that there is an attorney-client relationship with an

ethical and fiduciary duty upon the attorney to represent the client's best interests under applicable rules of professional responsibility.

We made a technical change to the language in § 302.35(a)(2)(i) to include "non-parent relatives" to the list of those individuals about whom the State PLS may disclose information under section 453(a)(2) and 453(j)(3) of the Act for locate purposes. This was based on a comment that the rule was inconsistent; we agree and made the change accordingly. Additionally, this change is consistent with the change made to § 302.35(d)(2) in accordance with the Fostering Connections Act. We changed the language at § 302.35(c) in response to a comment that, as written, the NPRM would mandate that Tribal IV–D programs would have to make attestation and provide evidence that they are an authorized program to which the State PLS may disclose locate information. It was not our intent to exclude authorization for Tribal IV–D programs which are a part of the Child Support Enforcement program and have an intergovernmental agreement with a State to access Federal PLS information as set forth in OCSE PIQT–10–01. Therefore, we added new language to § 302.35(c)(1) providing that a Tribal IV–D agency that provides child support services under an approved Tribal IV–D plan and has an intergovernmental agreement in place with a State, entered into pursuant to section 454(7) of the Act for the provision of Federal PLS services, is an authorized program and may request locate information from the State PLS.

Additionally, the commenters supported preventing disclosure of confidential information to private collection agencies. However, the commenters thought that attestation remained important for a parent, legal guardian, attorney, or agent of a child not receiving assistance under title IV–A of the Act. We agree and reinstated the attestation for those individuals listed above in § 302.35(c)(3)(iii).

A conforming change was made to § 303.20 that was not proposed in the NPRM. Previously, § 303.20(b)(7) referenced operation of the State PLS required under § 302.35. Because of the changes made to the regulatory language at § 302.35, it was necessary to make a conforming change for consistency by adding §§ 303.3 and 303.70 to the regulatory text at § 303.20(b)(7).

The final change to the regulatory language is in §§ 303.70(d)(1), (3), and (4). This technical amendment was made to correspond with the change intended to permit disclosure of location information regarding non-parent relatives. The former paragraph referred to information provided to parents and putative fathers. The technical correction is necessary to eliminate any conflicts or confusion in providing non-parent relative information to IV–B and IV–E agencies. The phrase "non-parent relative" was added to § 303.70(d)(1). The language at § 303.70(d)(2), which requires that a parent's or putative father's Social Security Number (SSN) be provided to the State PLS or Federal PLS for purposes of locating parents, putative fathers, or children for purposes related to title IV–D, IV–A, IV–B and IV–E was not changed. This also requires that the IV–D agency must make reasonable efforts to ascertain the individual's SSN before making the submittal to the Federal PLS. It was not appropriate to add "non-parent relative" to this section because the IV–D agency is not required to ascertain the SSN of a non-parent relative prior to making a submittal to the Federal PLS. A new § 303.70(d)(3) was added to require that the submittal request contain the non-parent relative's SSN, if known. Former § 303.70(d)(3) is thus renumbered to § 303.70(d)(4).

Some commenters suggested changes to the Appendices based on changes in the proposed regulatory language. We amended the Appendices in three areas: one change was made to Appendix A and two changes were made to Appendix C. A suggestion was made that we include language in the "Limitations" column in Appendix A as it relates to the State agency administering IV–B and IV–E programs in accordance with sections 453(c)(4), 453(j)(3) and 454(8) of the Act. We agree and added language that indicates that any use of the information from the Federal PLS and the State PLS outside the purposes of section 453(a)(2) and 453(j)(3) of the Act requires independent verification. The first change in Appendix C was to modify the term "food stamps" to "SNAP" for consistency with the regulatory language and the rest of the Appendix. This change was in the "Authorized person/program" under the portion of Appendix C that listed the authority for sections 453A(h)(2) and 1137 of the Act. The second change to the Appendix was to add a footnote. Commenters correctly noted that Appendix C did not reference the domestic violence language referenced in both Appendices A and B. This prohibition against the disclosure of information if there is a reasonable evidence of domestic violence or child abuse and the disclosure of such information would be harmful to the custodial parent (also referred to as resident parent) or child is required by sections 453(b)(2) and (3), 454(8) and (26) of the Act.

IV. Section-by-Section Discussion of Comments

This section provides a detailed discussion of comments received on the proposed rule, and describes changes made to the proposed rule. We referred generally to actions of the "Department" pursuant to the rule. The rule itself refers to actions of the "Secretary," however, the day-to-day activities of the Secretary's functions have been delegated and are exercised by other Department officials, primarily in the Administration for Children and Families. "Office" refers to the Federal Office of Child Support Enforcement (OCSE). We received comments from 26 commenters including 12 State agencies, nine advocacy groups, two organizations, and three private citizens. The majority of comments related to State Parent Locator Service, § 302.35.

General Comments

Several comments not attributable to specific sections of the regulation are discussed below.

1. *Comment:* All commenters supported the prohibition of disclosing confidential and personally identifiable information to private child support collection agencies (PCAs).

Response: We agree that the prohibition of disclosing confidential and personally identifiable information to PCAs is an appropriate change to the regulation. The final rule reflects that position.

2. *Comment:* All commenters supported the expansion of released information to title IV agencies, including IV–B and IV–E.

Response: This final rule mandates the expansion provided in the proposed rules consistent with section 453(j)(3) of the Social Security Act, permitting disclosure of information to IV–B and IV–E agencies for a broader range of authorized purposes that was not fully addressed in the September 26, 2008 regulation. Program responsibilities include locating relatives of children removed from parental custody in order to identify potential placements for the child and assist the State agency in permanency planning. Communication involving data matches and shared data between IV–D, IV–B, and IV–E programs serves the best interests of children and their families.

3. *Comment:* One commenter stated that for child welfare purposes, noncustodial parents should be notified and considered as potential placements. This would occur when identifying

relatives, providing notice to relatives, and placing siblings together. If the noncustodial parent is not an appropriate placement, the noncustodial parent may still be able to provide critical information to aid in making prompt and appropriate arrangements for children.

Response: We agree that it may be appropriate for children to be placed with their biological (both custodial and noncustodial) parents, consistent with child welfare program policies and the best interests of the children. This regulation provides for information concerning relatives, including the noncustodial parent under § 305.35(d)(1), to be released to the IV–B and IV–E agencies.

4. *Comment:* One commenter was supportive of restricting access to PCAs, but questioned the policy in PIQ 02–02 that, as written, would allow custodial parents to change their addresses to a PCA address.

Response: As discussed in the preamble to the NPRM, PIQ–02–02, *Requests by Custodial Parents for a Change of Address for the Disbursement of the Custodial Parent's Share of Child Support Collections* allowed a custodial parent to change his or her address to that of a PCA. The redirection of payments by a PCA and the policy to allow a custodial parent to change his or her address to that of a PCA, will be considered under a separate rulemaking authority.

On August 14, 2009, OCSE issued DCL–09–22, *Private Collection Agencies and Redirection of Payments.* This DCL indicated that OCSE had been alerted to the fact that some PCAs have instructed employers to redirect child support payments away from a State Disbursement Unit (SDU) to a PCA. In accordance with sections 454B, 466(a)(1)(A), 466(a)(8), and 466(b)(5) of the Act, payments in all IV–D cases and in non-IV–D cases in which the initial support order was issued on or after January 1, 1994 and in which the obligor's income is subject to wage withholding must be paid through the SDU.

5. *Comment:* One commenter expressed concern that the answer to question one in PIQ 03–05 conflicts with the NPRM, and should be changed.

Response: We agree. PIQ–03–05, *Guidance on Private Collection Agencies—Agent of a Child and Third Party Address for Correspondence* addressed inquiries requesting clarification on issues related to PCAs. The PIQ indicated that because "agent of a child" was not defined, a "for profit, private collection agency or private attorney could act as an 'agent of a child' provided it has a valid contract that meets the State's statutory and regulatory requirements for acting as an agent, if any," and was thus authorized, under section 453(b)(1) and (c), to access confidential information from the Federal and State PLS.

This final rule adds a definition of "agent of a child." Under the definition of "agent of a child," a PCA no longer qualifies as an authorized person to receive confidential and personally identifiable information. In the final rule "agent of a child" means a caretaker relative having custody of or responsibility for the child. We will revise the PIQ after publication of the final rule to ensure consistency with the regulation.

6. *Comment:* The proposed effective date for changes is not sufficient time to implement the changes. The commenter expressed concerns about the difficulty for States to implement the final rule as published on September 26, 2008 and then implement this final rule.

Response: The delay in implementation of the final rule published on September 26, 2008 was necessitated by the concerns raised by Departmental officials and commenters. We believe that the differences in the proposed and final regulation are not so great that the implementation cannot be accomplished. OCSE is prepared to provide assistance to States as needed.

Section 301.1, "Agent of a Child" Definition

1. *Comment:* Many commenters agreed with the inclusion of "caretaker relative" in the definition of "agent of a child." Other commenters suggested removing "relative" from the definition, and a few commenters proposed narrowing the definition to include only a court-appointed conservator or guardian *ad litem.* One commenter suggested adding "non-parent relative" to the definition.

Response: As noted in the preamble to the NPRM, "caretaker relative" is a longstanding term used in the TANF program and recognizes the practical reality that children are sometimes left in the care of a relative even though the relative may not have been appointed by a court. This language allows appropriate family members to advocate for the child's best interests. The definition also prohibits PCAs, which may have financial motives separate, or even adverse to the child's best interests, from acting as the child's agent. We did not see the need to provide a specific definition for legal guardian.

2. *Comment:* One commenter agreed with our definition, but questioned whether a Tribal IV–D agency's ability to access the Federal PLS is supported by the definition of "agent of a child."

Response: We agree and have revised the final rule to clarify that a Tribal IV–D agency's authority to access information contained in the Federal PLS and State PLS is at newly added language at § 302.35(c)(1) which includes a Tribal IV–D agency as an authorized program.

Section 301.1, "Attorney of a Child" Definition

1. *Comment:* In the NPRM, we specifically sought comments on whether to add a definition of "attorney of a child" to the final rule. Several commenters thought a definition was necessary for "attorney of a child" for various reasons. Some commenters thought that it was important to clarify that attorney, as referenced in section 453(c)(3) of the Act refers to attorney of a child, not an attorney for either parent. Other commenters thought it was important that OCSE adopt a definition that requires assurance of a genuine attorney-client relationship that creates an ethical obligation to represent the best interests of the child. Another commenter stated that the language in the NPRM regarding the phrase "attorney of a child," was too broad and needed to be defined.

Response: We are persuaded that a definition is necessary, and we have revised § 301.1 to provide the following definition: "Attorney of a child means a licensed lawyer who has entered into an attorney-client relationship with either the child or the child's resident parent to provide legal representation to the child or resident parent related to the establishment of paternity, or the establishment, modification, or enforcement of child support. An attorney-client relationship imposes an ethical and fiduciary duty upon the attorney to represent the client's best interests under applicable rules of professional responsibility." (Please note that "resident parent" is also referred to as "custodial parent".)

Section 302.35—Parent Locator Service

1. *Comment:* One commenter correctly noted that although §§ 302.35(a) and (b) were not open for comment, a clarification was necessary to add "non-parent relative" to authorize disclosure of locate information for title IV–B and title IV–E purposes in § 302.35(a)(2) consistent with the change made to § 302.35(d)(2).

Response: We agree with this comment and made this technical correction to the final rule at § 302.35(a)(2)(i) to read, "The State PLS

shall access and release information authorized to be disclosed under section 453(a)(2) and 453(j)(3) of the Act from the Federal PLS and, in accordance with State law, information from relevant in-State sources of information and records, as appropriate, for locating custodial parents, noncustodial parents, non-parent relatives, and children upon request of authorized individuals specified in paragraph (c) of this section, for authorized purposes specified in paragraph (d) of this section." An additional change was made to § 302.35(a)(2)(i) that authorizes disclosure of information about relatives of children involved in IV–B and/or IV–E cases in accordance with the Fostering Connections Act.

2. *Comment:* One commenter said that the language at § 302.35(c) and Appendix A indicates that a request involving a child not receiving IV–A assistance is a non-IV–D requests. Many children who are not receiving IV–A assistance are participants in a IV–D case.

Response: We agree that many children who are not receiving IV–A assistance may be participants in a IV–D case. However, this authorized purpose of the request example is specific to non-IV–D child support cases. The language is based on section 453(c)(3) of the Act.

3. *Comment:* One commenter, although supportive of the goal of denying access to Federal PLS information to a PCA, proposed that we do not delete § 302.35(c)(3)(iii) since it did not solely apply to PCAs, and also required evidence of a relationship between the requestor and the child. Another commenter suggested that it is not burdensome to request an attestation that the requestors are who they purport to be, especially when it comes to releasing confidential information. This same commenter suggested that we add "resident" to the regulatory language.

Response: We agree with the commenters and have added § 302.35(c)(3)(iii) requiring an attestation from a resident parent, legal guardian, attorney, or agent of a child. The addition of "resident" is appropriate as it is consistent with the statutory language. Section 453(c)(3) of the Act includes the definition of "authorized person" as a resident parent. The final rule at § 302.35(c)(3)(iii) is amended to read: "Attests that the requestor is the resident parent, legal guardian, or attorney, or agent of a child not receiving assistance under title IV–A."

4. *Comment:* Many commenters were pleased with broadened disclosure of information allowed by § 302.35(d) for the disclosure of an individual's location, income, employment benefits, assets, debts, child support history, Family Violence Indicator (FVI), and other confidential information not only for parents, but non-parent relatives as well. One commenter explained that the broadened purposes will assist in carrying out IV–B and IV–E's responsibility to administer their programs.

Other commenters wanted to limit disclosure to non-parent relatives and were primarily concerned with privacy for family violence victims. One commenter who wanted to limit disclosure expressed concern that the option for State IV–D agencies to share with other child welfare agencies a broader range of data elements than available in the Federal PLS raises safety, information reliability, and privacy concerns for domestic violence victims.

One commenter prefers limiting data access to "the extent necessary" to achieve an authorized purpose. The commenter elaborated that this language would protect the privacy rights of individuals as information regarding an individual's assets and debts would rarely be necessary to establish parental rights, and the availability of health insurance would not be relevant towards locating a non-parent relative for placement of a child.

Response: Section 105 of the Fostering Connections Act amended section 453(j)(3) of the Social Security Act to expand the authority for information comparisons and disclosures of information from the Federal PLS for title IV program purposes to include child welfare and foster care programs funded under IV–B and IV–E of the Social Security Act. The law authorizes disclosure of information in the Federal PLS and State PLS to conduct data matches and share data with child welfare agencies "to the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under this part [D], part B or E, and programs funded under part A." This final rule reflects the extent to which that data matching and sharing is appropriate in assisting States to carry out their responsibilities.

The purpose of broadening disclosure of information about non-parent relatives is to promote communication and efficiency between title IV agencies. Many of the commenters realized this and were pleased with the policy. Some commenters were justifiably concerned about disclosing information in family violence cases. The Act addresses their concerns. Under sections 453(b)(2) and (3), 454(8), and 454(26) of the Act, no information may be disseminated regarding a family violence case. Section 453(b)(2) of the Act states that "* * * No information shall be disclosed if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent * * *." Please refer to the "Limitations" column in Appendices A, B, and C. This statutory limitation is reflected in Appendices A, B, and C. Additionally, the final rule at sections 302.35(e) and 303.21(e) published in the **Federal Register** on September 26, 2008 [73 FR 56422] prohibits the release of information when the State has reasonable evidence of domestic violence or child abuse.

We take these requirements very seriously and are committed to ensuring that information is not shared that might jeopardize the safety of an individual thought to be a victim of family violence or child abuse. The intention of the FVI is to protect the victim whether the victim is the child, the custodial parent or the noncustodial parent. We are working closely with the Family and Youth Services Bureau, Family Violence Prevention and Services Program in the Administration for Children and Families on this critical issue. We also plan to reach out to domestic violence programs in developing guidance and training. In fact, we currently lead a Domestic Violence Collaboration Work Group which includes representatives from the National Resource Center on Domestic Violence and the Family Violence Prevention and Services Program.

5. *Comment:* Two commenters stated that these final regulations should clarify that States will provide assurances that their title IV–D and IV–E agencies will collaborate, through an interagency agreement, to ensure that child welfare agencies safely and appropriately handle cases with an FVI flag. These agreements should address the manner and information to be shared. In addition, required training should address confidentiality, the impact of family violence, post-traumatic stress disorder, and cultural competency. OCSE and the Children's Bureau should consider issuing a joint guidance to assist States in crafting interagency agreements.

Response: We agree that when there is data sharing between two agencies, an interagency agreement strengthens the integrity of safeguarding the information between the agencies involved. Interagency training between IV–D, IV–B and IV–E agencies is appropriate to

ensure proper implementation of this final regulation. As we work to operationalize these regulations, we will develop joint guidance with our Federal counterparts in the child welfare and domestic violence programs on interagency agreements and conduct extensive outreach to State child support and child welfare programs.

6. *Comment:* Two commenters opposed establishing separate standards for disclosure for the Federal PLS and State PLS. One commenter requested that the regulations or other Federal guidance make clear, when referring to State IV–B and IV–E agencies for the purpose of receiving information under the proposed regulations, that political subdivisions of the State should be considered.

Response: The Federal PLS is not part of the State PLS. Requests for information from the Federal PLS must flow through the State PLS, and each State's standards are different based on sources of information each State receives in accordance with the State's law. For example, some States may have additional enforcement remedies that do not exist in the Federal PLS, such as seizure of lottery or gambling winnings. In addition, States administer the placement of children involved in IV–B and IV–E cases, and must abide by minimum Federal guidelines. States have broad discretion to implement their IV–B and IV–E programs, as long as they comport with the minimum Federal guidelines.

7. *Comment:* The regulation should acknowledge that establishing parental rights is part of assisting States to carry out their responsibilities under IV–B and IV–E.

Response: We agree that establishing parental rights is part of assisting States to carry out their responsibilities under titles IV–B and IV–E of the Act. We will work with our IV–B and IV–E colleagues in defining States' program responsibilities.

8. *Comment:* Two commenters raised a number of questions about information that is gathered as part of the application process for child support services and kept on file at the child support agency. These commenters wanted to know: What type of case-specific information is currently entered and retained in OCSE databases; whether location information could be separated from other types of information in the databases; if notice is provided to IV–D clients about the types of information entered and retained in the databases, and with whom and for what purposes may it be shared. The commenters also wanted to know whether there are opportunities available for the person providing the information to view and correct inaccuracies before sharing occurs; if informed consent is provided prior to OCSE sharing information with other agencies; if the client has the ability to limit any aspect of data sharing, and whether IV–D workers could be subject to a subpoena in child welfare cases in which decisions were made based on data secured from the OCSE database.

Response: Applications for child support services, although developed by each State agency, must contain Federally required data elements which are uploaded onto the State's automated system. OCSE's databases, such as the National Directory of New Hires and the Federal Case Registry must have system of records notices that provide notice to the public with respect to the collection of information on individuals and procedures for contesting the accuracy of a record. The system of records notices are currently in the process of being updated and should be in effect prior to the effective date of this rule. Also, *see* the Privacy Act and Paperwork Reduction Act notice on the Internal Revenue Service form W–4 form, available at *http://www.irs.gov/pub/irs-pdf/fw4.pdf*.

Additionally, location information can be separated from other types of data. Many States have a generic disclosure statement regarding the information collected on individuals and with whom it may be shared. States also proactively urge clients to update demographic information. A growing trend among States is the establishment of customer service Web sites which permit and/or encourage clients to review and update other information in the State's database.

Informed consent is not provided prior to OCSE sharing information with other agencies. Title IV–B and IV–E agencies are authorized by law to access this information under section 453(j)(3) of the Act for the purpose of carrying out their programs. Redisclosure of information is not addressed in this rule. Presently, such information must be independently verified before redisclosure by the IV–B or IV–E agency is permitted.

9. *Comment:* One commenter stated that 42 U.S.C. 653(j) clearly seemed to contemplate that not only will the IV–D agency share matches—the pairing of a known identity with additional elements—but it also will disclose information, including the identity of a person who may not previously have been known, to the IV–B and IV–E agency.

Response: This final regulation authorizes the sharing of information with IV–B and IV–E agencies available through the State PLS to locate relatives for potential placement of a child removed from parental custody, to place siblings in groups, and to otherwise assist State agencies in permanency planning activities. Information which may be disclosed about a child or a relative of children involved in IV–B and IV–E cases is limited to name, SSN, most recent address, employer name, and address and employer identification number. To the extent that a relative is "identified" through use of the Federal PLS and the State PLS, that information may be shared with IV–B and IV–E agencies. This final regulation also authorizes the sharing of information with IV–B and IV–E agencies available from the statewide automated system pursuant to section 454A(f)(3) of the Act, to assist such programs to carry out program functions.

Child welfare agencies do not have direct access to statewide child support automated systems to permit IV–B and IV–E caseworkers to search for data. Only certain IV–D staff have direct access to the Federal PLS. Courts and other programs do not. State IV–A, IV–B, and IV–E agencies will work together to develop appropriate transactions for an automated information exchange between the agencies to ensure adherence to proper data safeguarding standards as set forth in this regulation.

10. *Comment:* One commenter said that New York State is a State-supervised, county administered State. The commenter would like to know explicitly how the process of access to information from the State PLS would function in that State. The commenter also asked whether the information would be available directly to the local departments of Social Services, and how requests for information would be transmitted and received.

Response: We acknowledge that States organize and operate their programs differently. OCSE is currently in discussions with our Federal counterparts in the child welfare and domestic violence programs to develop broad based implementing guidance that States can use in their specific operational environments.

11. *Comment:* One commenter asked if the final regulation imposes any limitations on redisclosure of information by local departments of social services in performing their child welfare functions.

Response: We direct the commenter to Appendix A. Whether redisclosure is permitted depends upon the purpose of the inquiry, and the agency requesting the data. Title IV–B and IV–E agencies are authorized by law to access this

information for the purpose of carrying out their programs. Redisclosure of information is not addressed in this rule. Presently, such information needs to be independently verified before redisclosure is permitted. OCSE and its counterparts in Federal child welfare and domestic violence programs will provide instructions in the future.

12. *Comment:* One commenter noted that currently there is a jointly-issued administrative directive which references how referrals for locating absent parents travel from child welfare to local IV–D units. The local IV–D units access Federal PLS and State PLS and return information back to local child welfare agencies. The commenter would like to see a new jointly-issued administrative directive as a result of the publication of this final rule.

Response: We agree that the jointly issued directive: ACYF–CB–IM–07–06/OCSE–IM–07–06, *Appropriate Referrals, Requests for Location Services, Child Support Applications, and Electronic Interface between Child Welfare and Child Support Enforcement Agencies,* issued on September 6, 2007, is an important document for the interoperability of the child support, domestic violence, and child welfare programs. We will collaborate with the Administration on Children, Youth and Families of HHS to update this joint document as appropriate.

13. *Comment:* One commenter suggested that the purpose of disclosure should guide the amount of information disclosed rather than the specific relative relationship between the requester and the child. The commenter supported the broader disclosure regulated at § 302.35(d)(1) and the more limited disclosure regulated at § 302.35(d)(2).

Response: We agree with the commenter. As provided in the regulation, the purpose of a request does control the nature of the data disclosed. The Appendices provide guidance as to the information that may be disclosed and the agencies to which the information may be disclosed depending on the purpose for which the information is being requested.

14. *Comment:* One commenter stated that title IV–B and IV–E agencies should be provided with at least the six pieces of information [name, Social Security Number, address, employer's name, employer's address, and employer identification number]. The commenter also encouraged the sharing of additional contact information, such as telephone numbers and e-mail addresses, if the Federal PLS or State PLS maintains these sources of information.

Response: The final regulation at § 302.35(d)(2) clearly establishes that for the purposes of assisting States to carry out their responsibilities to administer the IV–B and IV–E programs, the information that may be disclosed with respect to a child or relative of a child involved in a IV–B or IV–E case is limited to: Name, SSN, most recent address, employer name and address, and employer identification number. The Federal PLS does not maintain additional contact information such as telephone numbers and e-mail addresses. Additionally, if the case has an FVI marker, then *no* information about the case may be shared for any reason. Section 453(b)(2) of the Act says: "no information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child." Information from cases marked with the FVI may be released to a court or an agent of a court pursuant to the procedure set forth in section 453(b)(2)(A) and (B).

15. *Comment:* One commenter stated that child welfare agencies do not need extensive information if their intent is to locate noncustodial parents, or to identify and/or locate grandparents or other relatives to carry out the purpose of the IV–B or IV–E program. The commenter encourages sharing any other contact information such as telephone numbers and e-mail addresses, if they are maintained on the State PLS or Federal PLS.

Response: As stated above, the information that may be disclosed about a child or relative of a child involved in a IV–B or IV–E case is limited to name, SSN, most recent address, employer name and address, and employer identification number.

16. *Comment:* One commenter noted that section 453(j)(3) of the Act directs the Secretary to disclose Federal PLS information to State agencies and the regulation directs the State PLS to disclose confidential information only from in-State sources regarding non-parent relatives; the regulation also excludes IV–B and IV–E agencies from receiving Federal PLS information regarding non-parent relatives. The commenter questioned the statutory authority for § 302.35(d)(2). The commenter recommended deleting § 302.35(d)(2) because the lack of a clear statutory basis creates liability for State IV–D agencies.

Response: We disagree that there is not a clear statutory basis for the disclosure of information at § 302.35(d)(2). The Fostering Connections Act amended section 453(j)(3) of the Act to include IV–B and IV–E agencies. While certain IV–D staff have direct access to the Federal PLS; courts and other programs do not have access. Requests for information from the Federal PLS must flow through the State PLS. Federal PLS information is not excluded.

17. *Comment:* Two commenters said that if data was exchanged between child support and child welfare agencies through an interagency agreement, provisions for implementation and enforcement of privacy and family violence safety protections should be required. This final rule should mandate the provisions to be included in the interagency agreements to facilitate compliance with the safeguarding rules. Those agreements should also contain provisions for informed consent to disclosures.

Response: As stated earlier in this preamble, when there is data sharing between two agencies, an interagency agreement strengthens the integrity of the agencies involved to safeguard the information. Intergovernmental agreements support the integrity and security of an intergovernmental system when data is shared. Any interagency agreement should contain provisions that comport with this final rule. Disclosures under section 453 of the Act do not require consent of the individual. Such disclosures are considered to be a routine use of the information collected under the Privacy Act.

18. *Comment:* One commenter noted that the Children's Bureau recently issued guidance on The Fostering Connections Act, encouraging States to employ a consistent definition of "relative" for the purposes of any guardianship assistance program and any notification that is carried out pursuant to The Fostering Connections Act. States are permitted to include non-blood relatives or "fictive kin" when defining "relative." The commenter suggests States be provided the latitude to use "fictive kin" when implementing this rule.

Response: OCSE defers to States' definitions of "relative."

Section 303.21—Safeguarding and Disclosure of Confidential Information

1. *Comment:* One commenter stated that under § 303.21(d)(1), the IV–D agency is not required to provide locate services to other State agencies performing duties under title IV, XIX, XXI, and SNAP if it is determined that doing so would interfere with the IV–D agency meeting its own obligations. The commenter said that the same provision should apply when providing location

information to authorized individuals in non-IV–D cases under section § 302.35.

Response: The statutory change made by The Fostering Connections Act contemplates that child support agencies will exchange data with IV–B and IV–E programs.

2. *Comment:* One commenter said that the response to comment 32, page 56437 of the final rule, published on September 26, 2008, implies that before IV–D agencies can disclose address or employment information received from the FCR or NDNH to the Medicaid agency, the IV–D agency is expected to verify the information through postal verifications or wages.

Response: The response to comment 32 in the final rule published on September 26, 2008, was meant as an example. We used postal verification in that instance for illustrative purposes only. Independent verification, as defined in § 303.21(a)(2), is still valid: "Independent verification is the process of acquiring and confirming confidential information through the use of a second source. The information from the second source, which verifies the information about NDNH or FCR data, may be released to those authorized to inspect and use the information as authorized under the regulations or the Act." This final rule did not change § 303.21(a)(2).

Section 303.70—Procedures for Submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS)

1. *Comment:* One commenter noted that although not open for comment, § 303.70(d)(1) needs to be revised to correspond with the change intended to permit location information for non-parent relatives. The paragraph refers to information to be provided to parents and putative parents. Without corresponding changes, the commenter noted conflicts may arise in providing non-parent relative information to IV–D and IV–B agencies.

Response: We agree that a conforming change is appropriate and have made the corresponding change. The final regulation at § 303.70(d)(1) now reads: "The parent's, putative father's or non-parent relative's name; * * *."

2. *Comment:* One commenter observed that State IV–D directors are required to annually attest that the State IV–D agency only will obtain information from the Federal PLS that meets Federal requirements. Any conflict in requirements for State PLS and Federal PLS increases the risks for States that must interpret and apply the law correctly.

Response: States should continue to be diligent in meeting requirements and assessing risks. States are responsible for applying these laws.

Section 307.13—Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997

1. *Comment:* One commenter stated that the automated systems guide requires States to have data exchanges with title XXI for establishing and enforcing medical support. The elements include address, name, employer, and employer address. In Florida, all SSNs are verified by the Federal Case Registry (FCR). The FCR is the only verification source used for SSNs. Under the new requirements, States will be required to reprogram systems to identify each data element's verification source, isolate National Directory for New Hires (NDNH) and FCR sources and only exchange data that does not have a verification source of NDNH and FCR. The commenter further explained that the final rule in 2008 (73 FR 56437, response to comment 42) stated that independent verification is not required but "is merely a condition that must be met if the State wishes to use or disclose information for non-IV–D purposes to non-authorized persons. There is no such restriction in IV–D cases." That rule says that IV–D agencies are required to exchange information with title XIX and SSI using the automated system and would not require independent verification because it was used for IV–D purposes. Is that still the case or does this new rule supersede that?

Response: This rule revised only certain sections of the *State Parent Locator Services, Safeguarding Child Support Information; Final Rule* that was published on September 26, 2008. This final rule does not change the fact that child support agencies may exchange data from the automated child support system with title XIX and title IV programs under section 454A(f)(3) of the Act, and sections 303.21(d)(1) and 307.13(a)(3) and (4), without independent verification. The only limitation in the final rule is that IRS information must be independently verified before being exchanged with title IV or title XIX programs and MSFIDM data may not be shared, even if independently verified. Therefore, this final rule does not supersede the final rule published on September 26, 2008 [73 FR 56422] as it relates to data exchanges with title XIX agencies. Regarding the SSI program, SDNH information may be shared for benefits eligibility verification pursuant to section 453A(h)(2)

2. *Comment:* One commenter was pleased to see the inclusion of SNAP on the list of authorized recipients of child support information. Another commenter questioned the different requirements for disclosure in § 307.13(a)(3) and § 307.13(a)(4)(iii) and § 307.13(a)(4)(iv).

Response: The commenter was correct that there are different requirements for disclosure under § 307.13(a)(3) and § 307.13(a)(4)(iii) and § 307.13(a)(4)(iv). Under § 307.13(a)(3), information may be disclosed to Medicaid, SNAP, and CHIP to the extent necessary to carry out their program responsibilities to the extent that the information disclosure does not interfere with the IV–D program meeting its own obligations. Under § 307.13(a)(4), the disclosure of NDNH, FCR, FIDM, and IRS information may not be shared outside the program except with IV–B and IV–E agencies. Under section 454A(f)(3) of the Act, the Secretary has designated the title IV programs and thus authorized the release of that information to title IV programs. Title IV–B and IV–E programs are within the scope of the authority as set forth by those delegations.

Appendices

1. *Comment:* One commenter said that in the final rule published on September 26, 2008, the response to comment 39 stated that not all information received from the FCR is part of the FCR database and not subject to independent verification. Appendix A does not specify which data elements available from the FCR are subject to independent verification and which are not subject to independent verification. The commenter further explained that States need specific information on which data elements in which automated files are subject to independent verification.

Response: The data that is subject to independent verification is dependent upon several factors. The charts in the Appendices to this final rule are intended to assist the States in determining what data can be shared with which agencies from the different systems of information available to the State. *i.e.,* the automated statewide child support enforcement system, the State PLS, or the State Directory of New Hires, and for which purposes. OCSE will continue to assist States in ensuring that their statewide child support enforcement systems are programmed to be compliant with these data safeguarding rules.

2. *Comment:* One commenter said that the language in the "Limitations" column in Appendix A that states, "no

Internal Revenue Service information provided for non-IV–D cases unless independently verified" should be eliminated because IRS tax information cannot be disclosed for any reason, IV–D or non-IV–D, unless obtained by a third party. The preamble to the rule published on September 26, 2008 states: "There is no way to independently verify Federal Tax refund offset information. We continue to work with the Department of Treasury and the Congress to resolve this issue."

Response: We are not persuaded that this language should be eliminated from the Appendix. Independent verification, as defined in § 303.21(a)(2), is still valid and reads: "Independent verification is the process of acquiring and confirming confidential information through the use of a second source. The information from the second source, which verifies the information about NDNH or FCR data, may be released to those authorized to inspect and use the information as authorized under the regulations or the Act."

3. *Comment:* One commenter requested changes to the "Limitations" column in Appendix A. The commenter said that multi-State and in-State financial institution information is not available for non-IV–D cases. The wording in the Limitation "provide for non-IV–D cases" implies that State IV–D agencies are required to disclose Financial Institution Data Match (FIDM) information for non-IV–D cases. The suggestion was to revise the text to clarify that FIDM information cannot be disclosed outside of the IV–D program to any entity for any purpose. The same comment applies to resident parents, legal guardians, and attorneys.

Response: We disagree and have not amended the "Limitations" column. Please note that the column states "no multistate institution data match (MSFIDM) and no State Financial Institution Data Match (FIDM) provided for non-IV–D cases."

4. *Comment:* One commenter stated that the last row of the Appendix A, which refers to IV–B and IV–E receiving information on relatives of children, include both Federal PLS and State PLS as sources, but the regulatory language at § 302.35(d)(2) does not include Federal PLS.

Response: The regulatory language at § 302.35(d)(2) references § 302.35(d)(1) which states that information through the Federal PLS may be provided. The Appendix is accurate as it relates to Federal and State PLS as sources of information.

5. *Comment:* One commenter suggests that Tribal IV–D agencies be listed as a separate "authorized person/program" in Appendix A because it appears as if Tribal agencies have different access and limitations than those who would fall under "non-IV–D requests."

Response: Tribal IV–D agencies may acquire FIDM information through their State counterparts provided they have an interagency agreement in effect with the State. Many Tribal IV–D programs have these agreements in place and are receiving the information. We do not agree that Tribal IV–D agencies should be listed as a separate "authorized person/program" and have not made that change to the Appendix.

6. *Comment:* One commenter noted that PIQ–07–02/PIQT–07–02, *FFP for State Automated Systems Costs related to Service Agreements with Tribal IV–D Programs; Submitting Tribal IV–D cases for Federal Tax Refund Offset; and Submitting Requests to the Federal Parent Locator Service (FPLS) in Tribal IV–D* states that access to information from a source other than the IRS can be provided to Tribal IV–D programs. However, Appendix A indicates that no MSFIDM can be provided for non-IV–D cases. Can that information be disclosed to Tribal agencies?

Response: Tribal IV–D programs do not have direct access to the Federal PLS. However, Tribal IV–D programs may access information from the Federal PLS through an interagency agreement with the State in accordance with the change made to section 302.35(c)(1). Should a Tribal IV–D program enter into an interagency agreement with the State for access to this information, it is bound by these safeguarding regulations as noted in Footnote 2 to Appendix A. For additional information, *see* PIQT 10–01.

7. *Comment:* One commenter noted that the Appendix A limitations include "child not receiving IV–A benefits" and that attestation and evidence are required for Tribal IV–D programs. Is the intent that a Tribal IV–D program request associated with a child not receiving benefits not be honored? Is the intent that attestation, evidence, and a fee, be required for Tribal IV–D program access?

Response: The commenter correctly points out that Tribal IV–D programs should be included in the list of those considered as an authorized program. We agree and added new language to § 302.35(c)(1) which indicates that a Tribal IV–D agency that provides child support services under an approved Tribal IV–D plan and has an intergovernmental agreement in place with a State for the provision of Federal PLS services, is an authorized program and may request locate information from the State PLS. For additional information, *see* PIQT 10–01.

8. *Comment:* One commenter noted that Appendix C describes the disclosure of broader information to potentially multiple agencies. The Appendix does not include "Footnote 1" on limitations that is in both Appendices A and B. That footnote should be in Appendix C.

Response: We agree. In this final rule, the footnote was added to Appendix C and now reads: "No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. *See* sections 453(b)(2) and 454(26) of the Act for the process of releasing information to a court or agent of a court."

APPENDIX A—LOCATING INDIVIDUALS THROUGH THE STATE PLS § 302.35

Authorized person/program	Authorized purpose of the request	Persons about whom information may be asked	Sources searched	Authorized information returned	Limitations [1]
Agent/attorney of a State who has the duty or authority to collect child and spousal support under the IV–D plan. Tribal IV–D having in effect an intergovernmental agreement with a State IV–D agency, for the provision of Federal PLS services. Section 453(c)(1) and 454(7).	Establish paternity, establish, set the amount, modify, or enforce child support obligations and or to facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed. Locate a parent or child involved in a non-IV–D child support case to disburse an income withholding collection. Section 453(a)(2)	Noncustodial Parent Putative Father ..... Custodial Parent ..... Child ..... Section 453(a)(2)(A)	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements: Person's Name, Person's SSN, Person's address, Employer's name, Employer's address, Employer Identification Number. Section 453(a)(2)(A)(iii). Wages, income, and benefits of employment, including health care coverage. Section 453(a)(2)(B) Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C)	*See* footnote.
Court that has the authority to issue an order against an NCP for the support and maintenance of child, or to serve as the initiating court in an action to seek a child support order. Section 453(c)(2).	To facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed. Locate a parent or child involved in a non-IV–D child support case.	Noncustodial Parent Custodial Parent ..... Putative Father ..... Child	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements as above, plus. Wages, income, and benefits of employment, including health care coverage. Section 453(a)(2)(B) Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C)	No Internal Revenue Service (IRS) information provided for non-IV–D cases unless independently verified. No Multistate Financial Institution Data Match (MSFIDM) and no State Financial Institution Data Match (FIDM) information provided for non-IV–D cases. No required subsequent attempts to locate unless there is a new request.
Resident parent, legal guardian, attorney, or agent of a child not receiving IV–A benefits (a non-IV–D child support request). Section 453(c)(3)[2].	To facilitate the location of any individual who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed, or who has or may have parental rights with respect to the child. Locate a parent or child involved in a non-IV–D child support case.	Noncustodial Parent Putative Father	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements as above, plus. Wages, income, and benefits of employment, including health care coverage. Section 453(a)(2)(B) Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C)	Child not receiving IV–A benefits. No IRS Information. No MSFIDM and no State FIDM information provided for non-IV–D cases. In a non-IV–D request, attestation and evidence is required as specified in § 302.35(c)(3)(i)–(iii). No required subsequent attempts to locate unless there is a new request.

APPENDIX A—LOCATING INDIVIDUALS THROUGH THE STATE PLS § 302.35—Continued

Authorized person/program	Authorized purpose of the request	Persons about whom information may be asked	Sources searched	Authorized information returned	Limitations [1]
State agency that is administering a Child and Family Services program (IV–B) or a Foster Care and Adoption IV–E program. Sections 453(c)(4), 453(j)(3), and 454(8).	To facilitate the location of any individual who has or may have parental rights with respect to the child. Section 453(a)(2)(iv); and to assist states in carrying out their responsibilities under title IV–B and IV–E programs. Sections 453(j)(3) and 454(8).	Noncustodial Parent Putative Father ..... Custodial Parent Child. Sections 453(a)(2)(A), 453(j)(3), and 454(8).	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements as above, plus. Wages, income, and benefits of employment, including health care coverage. Type, status, location, and amount of assets or debts owed by or to the individual. Section 453(a)(2)(C)	No IRS information unless independently verified. No MSFIDM information and no State FIDM information provided. Any information outside the purpose stated in Section 453(a)(2) and Section 453(j)(3) requires independent verification.
State agency that is administering a Child and Family Services program (IV–B) or a Foster Care and Adoption IV–E program. Sections 453(j)(3) and 454(8).	To assist states in carrying out their responsibilities under title IV–B and IV–E programs. Sections 453(j)(3) and 454(8).	Relatives of a child involved in a IV–B or IV–E case.	Federal Parent Locator Service. In-state sources in accordance with State law.	Six Elements as above.	No IRS information unless independently verified. No MSFIDM information and no State FIDM information provided. Any information outside the purpose stated in Section 453(j)(3) requires independent verification.

[1] No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. *See* sections 453(b)(2) and 454(26) of the Act for the process of releasing information to a court or agent of a court.

[2] No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. *See* sections 453(b)(2) and 454(26) of the Act for the process of releasing information to a court or agent of a court.

APPENDIX B—LOCATING AN INDIVIDUAL SOUGHT IN A CHILD CUSTODY/VISITATION OR PARENTAL KIDNAPPING CASE

Type of request	Authorized person/program	Authorized purpose of the request	About whom information may be requested	Sources searched	Authorized information returned	Limitations [2]
Locating an individual sought in a child custody or visitation case	Any agent or attorney of any State who has the authority/duty to enforce a child custody or visitation determination. § 463(d(2)(A) A court, or agent of the court, having jurisdiction to make or enforce a child custody or visitation determination. § 463(d)(2)(B)	Determining the whereabouts of a parent or child to make or enforce a custody or visitation determination. § 463(a)(2)	A parent or child. § 463(a)	Federal Parent Locator Service In-state sources in accordance with State law.	Only the three following elements: Person's address, Employer's name, Employer's address, § 463(c)	*See* footnote. No IRS information provided. No MSFIDM or State FIDM information provided. No subsequent attempts to locate unless there is a new request.

APPENDIX B—LOCATING AN INDIVIDUAL SOUGHT IN A CHILD CUSTODY/VISITATION OR PARENTAL KIDNAPPING CASE—Continued

Type of request	Authorized person/program	Authorized purpose of the request	About whom information may be requested	Sources searched	Authorized information returned	Limitations [2]
Locating an individual sought in a parental kidnapping case	Agent or attorney of the U.S. or a State who has authority/duty to investigate, enforce, or prosecute the unlawful taking or restraint of a child. § 463(d)(2)(C)	Determining the whereabouts of a parent or child to enforce any State or Federal law with respect to the unlawful taking or restraint of a child. § 463(a)(1)	A parent or child. § 463(a)	Federal Parent Locator Service. In-state sources in accordance with State law.	Only the three following elements: Person's address, Employer's name; Employer's address, § 463(c).	*See* footnote. No IRS information provided No MSFIDM or State FIDM information provided. No subsequent attempts to locate unless there is a new request.

[2] No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. *See* sections 453(b)(2) and 454(26) of the Act for the process of releasing information to a court or agent of a court.

APPENDIX C—AUTHORITY FOR STATE IV–D AGENCIES TO RELEASE INFORMATION TO NON–IV–D FEDERAL, STATE, AND TRIBAL PROGRAMS

Authority	Authorized purpose of request	Authorized person/program	Authorized information returned	Limitations [3]
Sections 453 and 454A(f)(3) of the Act, Section 1102 of the Act; and 45 CFR 307.13.	To perform State or Tribal agency responsibilities of designated programs.	State or Tribal agencies administering title IV, XIX, and XXI, and SNAP programs.	Confidential information found in automated system.	No Internal Revenue Service information unless independently verified No MSFIDM or State FIDM information provided. No NDNH and FCR information for title XIX and XXI unless independently verified. For IV–B/IV–E, for purpose of section 453(a)(2) of the Act can have NDNH and FCR information without independent verification. — Any other purpose requires independent verification. For IV–A NDNH/FRC information for purposes of section 453(j)(3) of the Act without independent verification. — Need verification for other purposes.
Sections 453A(h)(2) and 1137 of the Act—State Directory of New Hires.	Income and eligibility verification purposes of designated programs.	State agencies administering title IV–A, Medicaid, unemployment compensation, SNAP, or other State programs under a plan approved under title I, X, XIV, or XVI of the Act.	SDNH information: Individual's name, address and SSN; employer's name, address, and Federal employer identification number.	

[3] No information shall be disclosed if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. No information shall be disclosed if the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the CP or child. *See* sections 453(b)(2) and 454(26) of the Act for the process of releasing information to a court or agent of a court.

Paperwork Reduction Act

Section 302.35(c) contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families (ACF) has submitted a copy of this section to the Office of Management and Budget (OMB) for its review in tandem with the final rule published on

September 26, 2008. There are no changes to this section.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. The changes would not significantly alter States' child support enforcement operations. This regulation responds to State requests for guidance on data privacy issues and therefore should not raise negative impact concerns.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year adjusted annually for inflation. The threshold for 2010, adjusted for inflation is $135 million. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. We have determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $135 million in 2010. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments. There are no costs associated with this regulation. It clarifies the protection of confidential information contained in the records of State child support enforcement agencies.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation protects the confidentiality of information contained in the records of State child support enforcement agencies. These regulations will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive order.

List of Subjects

45 CFR Part 301

Child support, definitions.

45 CFR Part 302

Child support, Grants programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 307

Child support, Grant programs/social programs, Computer technology, Requirements.

Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: September 30, 2010.

David A. Hansell,

Acting Assistant Secretary for Children and Families.

Approved: November 5, 2010.

Kathleen Sebelius,

Secretary of Health and Human Services.

■ Accordingly, the Department of Health and Human Services amends title 45 chapter III of the Code of Federal Regulations as follows:

PART 301—STATE PLAN REQUIREMENTS

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

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

■ 2. Section 301.1 is amended by adding a definition for "agent of a child" and "attorney of a child" in alphabetical order to read as follows:

§ 301.1 General definitions.

Agent of a Child means a caretaker relative having custody of or responsibility for the child.

Attorney of a Child for means a licensed lawyer who has entered into an attorney-client relationship with either the child or the child's resident parent to provide legal representation to the child or resident parent related to establishment of paternity, or the establishment, modification, or enforcement of child support. An attorney-client relationship imposes an ethical and fiduciary duty upon the attorney to represent the client's best interests under applicable rules of professional responsibility.

PART 302—STATE PLAN REQUIREMENTS

■ 3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

■ 4. Amend § 302.35 by revising paragraphs (a)(2)(i), (c)(1) through (3) and (d) to read as follows:

§ 302.35 State parent locator service.

(a) * * *

(2) * * *

(i) The State PLS shall access and release information authorized to be disclosed under section 453(a)(2) and 453(j)(3) of the Act from the Federal PLS and, in accordance with State law, information from relevant in-State sources of information and records, as appropriate, for locating custodial parents, noncustodial parents, non-parent relatives, and children upon

request of authorized individuals specified in paragraph (c) of this section, for authorized purposes specified in paragraph (d) of this section.

* * * * *

(c) * * *

(1) Any State or local agency providing child and spousal support services under the State plan, and any Tribal IV–D agency providing child and spousal support services under a Tribal plan approved under 45 CFR Part 309, provided the State and Tribe have in effect an intergovernmental agreement for the provision of Federal PLS services;

(2) A court that has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving assistance under title IV–A of the Act only if the individual:

(i) Attests that the request is being made to obtain information on, or to facilitate the discovery of, any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations;

(ii) Attests that any information obtained through the Federal or State PLS shall be used solely for these purposes and shall be otherwise treated as confidential;

(iii) Attests that the requestor is the resident parent, legal guardian, attorney, or agent of a child not receiving assistance under title IV–A; and

(iv) Pays the fee required for Federal PLS services under section 453(e)(2) of the Act and § 303.70(f)(2)(i) of this chapter, if the State does not pay the fee itself. The State may also charge a fee to cover its costs of processing the request, which must be as close to actual costs as possible, so as not to discourage requests to use the Federal PLS. If the State itself pays the fee for use of the Federal PLS or the State PLS in a non-IV–D case, Federal financial participation is not available in those expenditures.

* * * * *

(d) *Authorized purposes for requests and scope of information provided.* The State PLS shall obtain location information under this section only for the purpose specified in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section.

(1) *To locate an individual with respect to a child in a IV–D, non-IV–D, IV–B, or IV–E case.* The State PLS shall locate individuals for the purpose of establishing parentage, or establishing, setting the amount of, modifying, or enforcing child support obligations or for determining who has or may have parental rights with respect to a child. For these purposes, only information in the Federal PLS or the State PLS may be provided. This information is limited to name, Social Security Number(s), most recent address, employer name and address, employer identification number, wages or other income from, and benefits of, employment, including rights to, or enrollment in, health care coverage, and asset or debt information.

(2) *To assist States in carrying out their responsibilities under title IV–D, IV–A, IV–B, and IV–E programs.* In addition to the information that may be released pursuant to paragraph (d)(1) of this section, State PLS information may be disclosed to State IV–D, IV–A, IV–B, and IV–E agencies for the purpose of assisting States to carry out their responsibilities to administer title IV–D, IV–A, IV–B, and IV–E programs, including information to locate an individual who is a child or a relative of a child in a IV–B or IV–E case. Information that may be disclosed about relatives of children involved in IV–B and IV–E cases is limited to name, Social Security Number(s), most recent address, employer name and address and employer identification number.

(3) *To locate an individual sought for the unlawful taking or restraint of a child or for child custody or visitation purposes.* The State PLS shall locate individuals for the purpose of enforcing a State law with respect to the unlawful taking or restraint of a child or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act. This information is limited to most recent address and place of employment of a parent or child.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 5. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

■ 6. Amend § 303.20 by revising paragraph (b)(7) to read as follows:

§ 303.20 Minimum organizational and staffing requirements.

* * * * *

(b) * * *

(7) Operation of the State PLS as required under §§ 302.35, 303.3, and 303.70 of this chapter.

* * * * *

■ 7. Amend § 303.21 by revising paragraph (d)(1) introductory text to read as follows:

§ 303.21 Safeguarding and disclosure of confidential information.

* * * * *

(d) *Authorized disclosures.* (1) Upon request, the IV–D agency may, to the extent that it does not interfere with the IV–D agency meeting its own obligations and subject to such requirements as the Office may prescribe, disclose confidential information to State agencies as necessary to assist them to carry out their responsibilities under plans and programs funded under titles IV (including Tribal programs under title IV), XIX, or XXI of the Act, and the Supplemental Nutrition Assistance Program (SNAP), including:

* * * * *

■ 8. Revise § 303.69(c) to read as follows:

§ 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (Federal PLS).

* * * * *

(c) All requests under this section shall contain the information specified in § 303.70(d) of this part.

* * * * *

■ 9. Amend § 303.70 by:

■ a. Revising paragraphs (a) and (d)(1);

■ b. Redesignating paragraph (d)(3) as (d)(4);

■ c. Adding new paragraph (d)(3); and

■ d. Revising paragraphs (e) introductory text, (e)(1)(i), and (e)(2).

The revisions and addition read as follows:

§ 303.70 Procedures for submissions to the State Parent Locator Service (State PLS) or the Federal Parent Locator Service (Federal PLS).

(a) The State agency will have procedures for submissions to the State PLS or the Federal PLS for the purpose of locating parents, putative fathers, or children for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations; for the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act, or for the purpose of assisting State agencies to carry out their responsibilities under

title IV–D, IV–A, IV–B, and IV–E programs.

* * * * *

(d) * * *

(1) The parent's, putative father's or non-parent relative's name; * * *

(3) The non-parent relative's SSN, if known.

(4) Any other information prescribed by the Office.

(e) The director of the IV–D agency or his or her designee shall attest annually to the following:

(1)(i) The IV–D agency will only obtain information to facilitate the location of any individual in accordance with section 453(a)(2) of the Act for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or for determining who has or may have parental rights with respect to a child, or in accordance with section 453(a)(3) of the Act for enforcing a State law with respect to the unlawful taking or restraint of a child, or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act, or in accordance with section 453(j)(3) of the Act for the purpose of assisting State agencies to carry out their responsibilities under title IV–D, IV–A, IV–B, and IV–E programs.

* * * * *

(2) In the case of a submittal made on behalf of a resident parent, legal guardian, attorney or agent of a child not receiving assistance under title IV–A, the IV–D agency must verify that the requesting individual has complied with the provisions of § 302.35 of this chapter.

* * * * *

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS IN OPERATION AFTER OCTOBER 1, 1997

■ 10. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

■ 11. Amend § 307.13 by revising paragraphs (a)(3), (4)(iii), and (iv) to read as follows:

§ 307.13 Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

* * * * *

(a) * * *

(3) Permit disclosure of information to State agencies administering programs under titles IV (including Tribal programs under title IV), XIX, and XXI of the Act, and SNAP, to the extent necessary to assist them to carry out their responsibilities under such programs in accordance with section 454A(f)(3) of the Act, to the extent that it does not interfere with the IV–D program meeting its own obligations and subject to such requirements as prescribed by the Office.

(4) * * *

(iii) NDNH and FCR information may be disclosed without independent verification to IV–B and IV–E agencies to locate parents and putative fathers for the purpose of establishing parentage or establishing parental rights with respect to a child; and

(iv) NDNH and FCR information may be disclosed without independent verification to title IV–D, IV–A, IV–B and IV–E agencies for the purpose of assisting States to carry out their responsibilities to administer title IV–D, IV–A, IV–B and IV–E programs.

* * * * *

[FR Doc. 2010–32424 Filed 12–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209 and 252

[DFARS Case 2009–D015]

RIN 0750–AG63

Defense Federal Acquisition Regulation Supplement; Organizational Conflicts of Interest in Major Defense Acquisition Programs

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 207 of the Weapon Systems Acquisition Reform Act of 2009. Section 207 addresses organizational conflicts of interest in major defense acquisition programs.

DATES: *Effective Date:* December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)(DPAP)(DARS), Room 3B855, 3062 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2009–D015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule to amend the DFARS to implement section 207 of the Weapon Systems Acquisition Reform Act of 2009 (WSARA) (Pub. L. 111–23). Section 207 requires DoD to revise the DFARS to provide uniform guidance and tighten existing requirements relating to organizational conflicts of interest (OCIs) of contractors in major defense acquisition programs (MDAPs). The law sets out situations that must be addressed and allows DoD to establish such limited exceptions as are necessary to ensure that DoD has continued access to advice on systems architecture and systems engineering matters from highly qualified contractors, while also ensuring that such advice comes from sources that are objective and unbiased.

In developing regulatory language, section 207 directed DoD to consider the recommendation presented by the Panel on Contracting Integrity and further directed DoD to consider any findings and recommendations of the Administrator of the Office of Federal Procurement Policy (OFPP) and the Director of the Office of Government Ethics (OGE) pursuant to section 841(b) of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110–417). Section 841(b) of the NDAA for FY 2009 required review by OFPP, in consultation with OGE, of FAR coverage of OCIs. Neither OFPP nor OGE has issued recommendations to date pursuant to section 841(b), but both have worked with the FAR Acquisition Law Team, which includes representatives from DoD and the civilian agencies, to draft a proposed rule on OCIs under FAR Case 2007–018. As part of this process, OFPP, OGE, and the FAR Acquisition Law Team reviewed comments received in response to an Advance Notice of Proposed Rulemaking, published in the **Federal Register** at 73 FR 15962 on March 26, 2008, and are also considering pertinent comments that were submitted in response to this DFARS Case 2009–D015 in formulation of the proposed FAR rule.

A public meeting was held on December 8, 2009 (*see* 74 FR 57666) to provide opportunity for dialogue on the possible impact on DoD contracting of the section 207 requirements relating to OCIs.

DoD published a proposed rule in the **Federal Register** on April 22, 2010 (75 FR 20954). The comment period was initially scheduled to close on June 21, 2010. On June 15, 2010, the comment

period was extended to July 21, 2010 (75 FR 33752).

II. Discussion and Analysis

DoD received comments from 21 respondents in response to the proposed rule. Some respondents expressed general support for the rulemaking. Others expressed concern that the rule did not achieve the overall objectives of section 207, either because the proposed coverage was too stringent or not sufficiently strong. Based on public comments, changes were made to the proposed rule, including the following:

- Removing from the DFARS final rule the proposed changes that would have provided general regulatory coverage on OCIs to temporarily replace that in FAR subpart 9.5.
- Locating the core of the final rule in subpart 209.5 and 252.209.
- Making clear that this final rule takes precedence over FAR subpart 9.5, to the extent that there are inconsistencies.
- Adding to the policy an explanation of the basic goals to promote competition and preserve DoD access to the expertise of qualified contractors.
- Tightening the exception for "domain experience and expertise" to require a head of the contracting activity determination that DoD needs access to the domain experience and expertise of the apparently successful offeror; and that, based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice.
- Refining the definition of "major subcontractor" to include upper and lower limits on application of the percentage factor test for determining if the value of the subcontract in relation to the prime contract warrants classifying the subcontract as major; specifically—
  - A subcontract less than the cost or pricing data threshold would not be considered a major subcontract; and
  - A subcontract equal to or exceeding $50 million would automatically be considered a major subcontract.
- Addressing pre-MDAP as well as MDAP programs.

The following is a discussion of the comments and the changes included in this final rule as a result of those comments. Comments on aspects of the proposed rule that would have provided general coverage on OCIs outside the context of major defense acquisition programs are being considered in the formulation of the FAR rule.

A. General

1. Incorporation in DFARS of OCI Regulations Beyond WSARA Requirements

Comment: A number of respondents took exception to coverage in the proposed rule that would have extended beyond MDAP to cover all DoD procurements, noting that the broader OCI changes should be considered for inclusion in the FAR rather than the DFARS for the following reasons:

- Congress did not mandate, or even suggest, that DoD adopt new regulations to completely rewrite the OCI rules applicable to all DoD procurements.
- The manner in which DoD is proceeding in relation to the FAR rule is an inversion of the way we normally proceed, is inefficient, and will be confusing and disruptive to DoD and industry.

One respondent said the rule goes beyond agency-specific acquisition regulations as contemplated and authorized by FAR 1.301 *et seq.,* both in form and in substance.

Two respondents endorsed the proposed rule's approach of extending the OCI coverage beyond MDAPs, with one respondent noting that the same OCI policy concerns that Congress addressed in connection with MDAPs apply across the board. This respondent also pointed out that the General Accountability Office bid protest case law that the proposed rule cites applies to all procurements, not only MDAPs. Also, the respondent said, application of the new OCI coverage to this broad spectrum of contracts provides a greater level of consistency across procurements.

Response: DoD does not agree that the proposed rule violated FAR subpart 1.3 by addressing OCI issues that go beyond those that are specifically applicable in the context of MDAPs, but has decided to remove coverage from the rule that is not required to comply with section 207 of WSARA. DoD's intent was to provide coverage that would improve all aspects of OCI policy affecting the covered contract types, not just those aspects unique to MDAPs and systems engineering and technical assistance (SETA) contracting, since some OCI issues involved are no different from those raised on any other procurement. In doing so, DoD also sought to temporarily apply those provisions that are common to both those contracts covered by section 207 and other contracts, so that all would benefit from the improved coverage until the FAR is modified. However, coordinating and reconciling the many comments received on the proposed general coverage with the team developing FAR coverage would delay the finalization of this rulemaking and could create unnecessary confusion. Therefore, DoD has concluded that the final DRAFS rule will address only MDAP and SETA OCI coverage as required by section 207. As noted above, comments related to the general coverage have been provided to the team developing changes to FAR coverage on OCIs.

Comment: Another respondent suggested that DoD and the FAR Council could use the WSARA-mandated changes as a pilot program and evaluate the results of the changes when developing the DoD-wide and Government-wide regulations. This respondent further stated that a powerful reason to restrict application of this rule to MDAP procurements as a pilot program is that OCI policy could drive significant changes to the industrial base.

Response: This comment is now moot, since DoD decided to remove the comprehensive coverage from the DFARS rule.

Comment: Another respondent stated that, by extending the scope of this rule beyond MDAPs, it appeared that DoD might have been trying to address the difficult issue of what rules to follow for programs and technology development efforts that start as a non-MDAP and then transition to an MDAP. If so, the respondent stated, this rule could have addressed that issue by limiting its applicability to MDAPs and then requiring that all potential OCI in non-MDAP programs be exempted or be "required to be easily mitigated" once they cross into the MDAP threshold.

Response: The issue of addressing programs that may become MDAP programs has been resolved by revising the final rule to cover both pre-MDAP and MDAP programs. SETA contracts are often required in the early pre-MDAP phase of a program.

2. Move From Subpart 9.5 to Subpart 3.12

Comment: Various respondents recommended that the rule on OCIs should remain in DFARS part 209 for the following reasons:

- Four respondents stated their opinions that the OCI rules should not be moved to DFARS part 203 to avoid the perception that OCI is in the same category as improper business practices, which pertains to conduct that is criminal in nature. Two of these respondents stated that putting OCI coverage in part 209 is inconsistent with the notion that mitigation is the preferred method of addressing OCI. One respondent said it was

unreasonable even to imply that an OCI inherently constitutes misconduct, since OCIs are routine in typical businesss settings and a byproduct of defense industry consolidation.

• On the positive side, one respondent said that the OCI rules should remain in DFARS part 209 because of their relationship to a company's responsibility. Another respondent stated the opinion that a contracting officer's determination of whether to accept or reject a mitigation plan has the same weight as a determination of affirmative responsibility.

• One respondent pointed out that while the Government has the discretion under both FAR 9.503 and the proposed rule to waive OCIs, it cannot waive improper business practices, such as unlawful gratuities and kickbacks.

• One respondent thought that the regulations should remain within DFARS part 9 simply for continuity.

Response: DoD does not agree that placing the OCI rules in part 203 vs. part 209 lends credence to the perception that OCI is in the same category as conduct that is criminal in nature. We note that part 209 also covers criminal activity by way of its association with suspension and debarment. Furthermore, the scope of part 203 has been evolving over time, an example being the recent FAR rule proposing inclusion of a new FAR subpart 3.11 to include policy addressing personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions—*see* FAR Case 2008–025. And while acceptance or rejection of a mitigation plan might affect a contractor's responsibility, it is not, in and of itself, a determination relating to responsibility.

However, because the FAR proposed rule has not yet been published, and because the decision has been made to limit this rule to implementation of OCIs in MDAPs (*see* section II.A.1.), this final rule has been located primarily in subpart 209.5, until such time as the FAR coverage on OCIs may be relocated.

B. MDAP Definitions

1. Major Subcontractor

Comment: Two respondents expressed concerns that the definition of "major subcontractor" was arbitrary. The proposed clause at 252.203–70WW (now 252.209–7009) defined a major subcontractor as a subcontractor awardee with a subcontract totaling 10 percent or more of the value of the contract. One of the respondents was concerned that a subcontractor with millions of dollars in subcontracts may not be covered, but others with less than $1 million would be covered.

Response: As the clause relates to subcontractors for major defense acquisition programs which, generally, are programs that exceed $1.8 billion (Fiscal Year 1990 constant dollars) in eventual total expenditure (10 U.S.C. 2430), a prime contract would not likely be issued with a value of only $10 million, which would be the prime contract threshold for a $1 million subcontract to meet the 10 percent subcontract threshold to be a major subcontract. However, DoD agrees with the need to enhance the definition. The final rule contains—

• A lower end exclusion of any subcontract that is less than the cost or pricing data threshold; and

• An upper bound, such that any subcontract that equals or exceeds $50 million will be considered a major subcontract, regardless of whether it meets the 10 percent criterion.

This is modeled after—

• 15.404–3(c)(1), which specifies thresholds for requiring cost or pricing data on subcontracts; and

• DODI 5000.02 Table 4, which addresses major contracts and subcontracts.

2. Systems Engineering and Technical Assistance

Comment: Two respondents observed that there is no definition of "Systems Engineering and Technical Assistance" in statute or regulation and noted that the FAR defines "systems engineering" and "technical direction," which may not necessarily be exactly the same as "systems engineering and technical assistance."

One of the respondents expressed concerns that the definition of "Systems Engineering and Technical Assistance" is vague and that the rule should add "to support requirements definition, source selection, or evaluation of contractor performance in a Major Defense Acquisition Program."

Several respondents proposed that the "systems engineering and technical assistance" definition be restricted to activities and functions that relate to supporting source selection and testing activities that might trigger bias and impaired objectivity OCIs. According to these respondents, all other support should be classified as engineering or program support; and the related OCIs should be addressed through standard mitigation techniques. "Systems Engineering and Technical Assistance" needs to be better defined and only address those circumstances when the contractor has "authority" and is in a position to unduly influence a program, event, or outcome.

Response: DoD decided to provide a unified definition for "systems engineering and technical assistance" as a single term, as well as the individual definitions of "systems engineering" and "technical assistance", because "systems engineering and technical assistance" is the statutory term and is the recognized term for a particular type of contract. DoD sought advice from systems engineering and technical assistance subject matter experts within DoD to arrive at a more comprehensive definition of the term. In response to public comments, DoD changed the requirement from "substantially all" to "any" and clarified that "directing other contractors' operations" does not apply to the operations of subcontractors. It is not necessary to include in the definition of SETA that it is only for MDAPs. SETA contracts could be for other types of programs as well. The limitation to MDAPs is accomplished through the policy statements and the clause prescriptions.

The definition should not restrict the meaning to select activities based on the presumption of the likelihood of the occurrence of an OCI. While potential OCIs can be significant concerns in source selection and testing activities, potential OCIs can exist in other activities, with harmful repercussions to DoD. The determination of the existence of potential for an OCI is situational and based on the facts and conditions. It is up to the contracting officer to determine the potential for an OCI. The definition should not be based on the presumption that an OCI will occur for SETA contracts and will not occur in the range of other activities.

Comment: One respondent made several comments about the definitions of a number of activities cited within the definition of "systems engineering" and "technical assistance" and suggested further definitional clarity of the activities. The respondent asked what "determining specifications" means and what "determining interface requirements" means. The respondent cited a number of specific actions a contractor may be asked to perform and asked if the work would fall under the DFARS definition of SETA.

Response: Further definition of the activity elements is not required. These terms are in common use. It is up to the contracting officer, exercising common sense, good judgment, sound discretion, and the advice of technical experts to determine if the activities in a

solicitation would be covered by the definition of SETA.

Comment: One respondent recommended that the SETA definition should include a statement that the contractor performs the services, but will not be delivering the system. The respondent cites Section 203.1270–6 (now 209.571–7) as the basis for this change.

Response: The consequence of being a SETA contractor is outside of, and unnecessary for, inclusion within the definition of what a SETA contractor is. While 209.571–7 prohibits a SETA contractor from participating as a contractor or major subcontractor on the related program, there are certain instances listed in 209.571–7 where the paragraph does not apply. Changing the definition of SETA is unnecessary and could lead to erroneous application of the rule.

C. MDAP OCI Policy

1. Mitigation Preference Is Not Appropriate

Comments: A number of respondents objected to the rule's designation of mitigation as the "preferred method" for resolving OCIs.

Two respondents suggested that a preference for mitigation would reduce, rather than increase, competition for Government contracts. Specifically, they suggested that the preference appears to favor industry interests in the sense that it chiefly will benefit large, integrated businesses which, but for the application of a preference for mitigation, might otherwise be precluded from competing for certain requirements.

Several respondents expressed concern that the preference for mitigation would impinge upon the contracting officer's duty and discretion to consider all appropriate factors, such as the potential costs associated with monitoring mitigation plans, when determining which method for resolving a particular OCI would best serve the Government's interest.

One respondent stated that establishing an outright preference for mitigation would create a potential ground for bid protests by unsuccessful offerors. The respondent opined that DoD agencies may find themselves defending against claims that contracting officers did not take adequate affirmative steps to comply with the preference by finding ways to mitigate potential OCIs.

Response: DoD carefully considered the comments on both sides of this issue. While finding that the policy rationale supporting the proposed preference for mitigation is sound, DoD agrees that establishing a formal preference may have the unintended effect of encouraging contracting officers to make OCI resolution decisions without considering all appropriate facts and information. Therefore, in order to make it clear that decisions about how best to resolve OCIs arising in particular procurements remain a matter within the "common sense, good judgment, and sound discretion" of DoD contracting officers, DoD has removed the rule's stated preference for mitigation.

However, DoD replaced the rule's explicit mitigation preference with a more general statement of DoD policy interests in this area. Specifically, the rule now provides that it is DoD policy to promote competition and, to the extent possible, preserve DoD access to the expertise and experience of highly-qualified contractors. To this end, the rule now emphasizes the importance of employing OCI resolution strategies that do not unnecessarily restrict the pool of potential offerors and do not impose per se restrictions on the use of particular resolution methods, except as may be required under part 209.571–7.

Comment: One respondent stated that the rule's stated policy preference for mitigation should be replaced with a preference for avoidance in order to comply with the "statutory intent" of WSARA. The respondent expressed concern that various aspects of the rule significantly impair the ability of contracting officers to employ avoidance strategies. Finally, the respondent commented that the rule should reflect that mitigation is the resolution method of last resort.

Response: As discussed in the response to the preceding comment, DoD replaced the rule's explicit preference for mitigation with language more generally emphasizing that contracting officers should seek to employ OCI resolution strategies that promote competition and do not unnecessarily restrict the pool of potential offerors. DoD does not agree that WSARA requires an across-the-board preference for avoidance. Such a preference would give rise to the same issues and concerns voiced by other respondents relating to contracting officer discretion, potential bid protests, and the like. To the extent that WSARA creates a requirement or preference for avoidance, that preference is limited to SETA contracts and is appropriately addressed at 209.571–7.

2. Mitigation Preference Is Appropriate and Should Even Be Strengthened

Comments: A number of respondents expressed support for the rule's stated preference for using mitigation to resolve OCIs. Generally, these respondents stated that the preference for mitigation would promote competition, preserve Government access to the broadest range of experienced contractors, and promote transparency.

Several respondents expressed concern that the rule does not do enough to encourage contracting officers to use mitigation and that some aspects of the rule may, in fact, discourage the use of mitigation.

One respondent suggested that, despite its stated preference for mitigation, the rule as a whole appears actually to favor avoidance and neutralization, principally because it provides "no meaningful guidance regarding when and how mitigation should be used."

Another respondent stated that the preference for mitigation would be more compelling if the rule included more examples of acceptable mitigation methods.

A third respondent made several specific recommendations for bolstering the preference for mitigation. The respondent suggested that DoD: (1) Add a statement "summarizing the potential benefits of mitigation" and (2) add language requiring contracting officers to "consider the status of the industrial base and the number of potential sources" before determining that mitigation was inappropriate.

Response: As discussed in responses to preceding comments, DoD decided to replace the rule's express preference for mitigation with language indicating that it is DoD policy that contracting officers should seek to employ OCI resolution strategies that promote competition and do not unnecessarily restrict the pool of potential offerors. DoD appreciates the general concern voiced by these respondents that some agencies and contracting officers may already be either implicitly or explicitly favoring avoidance-based resolution strategies. DoD recognizes that an explicit preference for mitigation may serve a useful purpose in cases where agencies or contracting officers are unnecessarily foreclosing competitive opportunities by favoring avoidance over mitigation. Therefore, although DoD has removed the rule's express preference for mitigation, the rule's revised policy language will have the appropriate effect of encouraging contracting officers to consider all potential OCI resolution

strategies, to pursue resolution outcomes that promote competition whenever feasible, and to implement strategies that are consistent with the Government's best interests, broadly speaking.

A more detailed analysis of the methods and benefits of mitigation is outside the scope of the present rule and may be addressed in the FAR rule on OCIs.

D. Identification of MDAP OCIs

Comment: One respondent requested a clarification in 203.1270–5(a)(2) (now 209.571–6(a)(2)) of the proposed rule to provide that there should not be a second OCI evaluation after award when the contractor establishes a team arrangement and its accepted proposal explains the work the prime will do and what other team members will do. The respondent was concerned that the proposed rule implies that there will be a reevaluation, although WSARA does not require a second evaluation. The respondent recommended adding before the semicolon in subparagraph (a)(2) the following: "either as part of the initial award determination or, if the prime contractor makes this disclosure after award, then before beginning the relevant work".

Response: There is nothing in the statement in the proposed rule that implies that the timing of the evaluation would be after award. In the proposed rule, the policy in 203.703 made clear that OCIs are to be resolved early in the acquisition process. Since this rule is limited strictly to MDAP, the requirement in current FAR 9.504(a) still applies, *i.e.,* the contracting officer is required to analyze planned acquisitions in order to identify and evaluate potential OCIs as early in the acquisition process as possible, and to avoid, neutralize, or mitigate significant potential conflicts before contract award. Further details about early resolution of OCIs will be addressed in the FAR OCI rule.

Comment: The same respondent also commented that the regulation should not be silent on how the contracting officer is to consider awards to affiliates.

Response: The policy section on identification of OCIs at 209.571–6(a)(2) states that the contracting officer "shall consider" the proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same corporate entity. Since OCIs are very specific to individual situations, the regulation cannot provide a precise prescription for how the contracting officer should consider this, except to alert the contracting officer to potential conflicts in such situations.

E. SETA Contracts

Comment: Four respondents expressed concern that the rule's exception for all highly-qualified SETA contractors (where the OCI can be adequately resolved) is overly broad, beyond the limited exception contemplated by WSARA, and unnecessary in view of the numbers of conflict-free SETA contractors.

One respondent stated that there is clear congressional preference for a rule prohibiting any systems engineering firm from participating in the development or construction of a system in an MDAP. The respondent quoted various sources, including the references by the Senate Armed Services Committee during debate on SR 111–201.

One respondent recommended that the rule should include a requirement that the contracting officer also determine that there is no other source with the requisite domain experience and expertise before approving OCI mitigation.

However, another respondent expressed concern about whether the rule will adequately ensure DoD access to advice on systems architecture and engineering matters.

Response: WSARA permits the SETA exception contained in the proposed rule. A SETA exception is necessary to meet DoD needs and the proposed exception contained the requirement that the OCI must be adequately resolved. In the absence of an exception, many or all prospective SETA contractors may have OCIs and could be excluded. As a result, the best-qualified or best-priced contractors might be unavailable unless future restrictions are lifted. However, in response to concern that the exception was overly broad and would not meet the objective of WSARA to "tighten" application of OCI policy, DoD revised the exception to require a determination by the head of the contracting activity that "an exemption is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror." The head of the contracting activity must further determine that, based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice.

Comment: Another respondent objected that the rule did not include an exception for performance of SETA functions by any affiliate of the contractor performing production or development work as a prime or major contractor, as was referenced in the statutory language and the accompanying conference report. Further, the respondent objected that the only acceptable mitigation approach for impaired objectivity OCIs for MDAPS seemed to be splitting work away from a contractor and affiliates, as the waiver option is not authorized.

Response: The SETA exception is not unduly restrictive with regard to affiliates. It is not true that affiliates of the contractor performing the production contract could not qualify for performance of SETA functions.

Further, although the waiver option was deliberately omitted from the exception because the statute requires that the contractor must be able to provide objective and unbiased advice, the rule does not address what mitigation approaches would be acceptable.

F. Training and Implementation

Comment: One respondent stated that it is necessary for the rule to address training and implementation. The respondent stated that contracting officers should not be allowed to make decisions on OCIs until training is completed.

Response: This is not an entirely new requirement. The FAR already requires that OCIs be addressed, and there are existing training courses that cover OCIs. The Government will make changes to standard contracting course curriculum to implement these changes.

Comment: The same respondent requested more guidance on the use of particular data sources to inform their decisions, and any required processes to implement the rule effectively. For example, the respondent suggests that contracting officers should separate SETA-type work from design- and development-type work, and not include both types in the same task order or other contract vehicle.

Response: FAR 9.506 procedures provide current guidance on sources of information to identify and evaluate potential organizational conflicts of interest. DoD has also added to DFARS Procedures, Guidance, and Information the guidance about separating SETA-type work from other types of design- and development-type work.

G. Regulatory Flexibility Analysis

Comment: Three respondents commented on the potential impact of the regulation on small businesses. However, several of the comments related to aspects of the rule that have been eliminated from this more focused final rule.

One respondent recommended adding language into the regulation that would exempt from OCI restrictions small

businesses that are not involved in hardware or major software developments. In addition, the same respondent recommended imposing the OCI restrictions on prime contractors and large subcontractors, and allowing small subcontractors (those with less than 10 percent of total award) and small businesses to continue to provide both development and contract efforts with approved OCI plans.

Response: DoD notes that the rule, per the statute, requires that a SETA contract for a major defense acquisition program contain a provision prohibiting the contractor or any affiliate of the contractor from participating as a prime contractor or a major subcontractor in the development or construction of a weapon system under the program. Therefore, "small," *i.e.,* other than major, subcontractors are exempted. The statute, however, does not provide for a specific exemption for small businesses. In addition, the rule does allow offerors, whether large or small, to continue to provide both development and contract efforts with approved OCI plans and an appropriate determination by the head of the contracting activity in accordance with 209.571–7(b).

H. Paperwork Reduction Act

Comments: Although no respondents specifically commented on the estimated burden hours published with the proposed rule, several respondents commented on the burden imposed by the disclosure requirement of 252.203–XX(e)(1)(ii).

Response: This requirement is no longer included in the rule. The only requirement now is for submission of a mitigation plan under a SETA contract if the offeror is requesting an exception to the limitation on future contracting.

III. Executive Order 12866

This is a significant regulatory action and, therefore, is subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not result in a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the requirements of subpart 209.572 do not differ substantially from the burden currently imposed on offerors and contractors by FAR subpart 9.5.

With regard to major defense acquisition programs, the prohibition against a SETA contractor participating in the development or production contract applies only to the prime contract or a major subcontract. Therefore, small businesses are less likely to be affected. Further, the rule allows for avoidance, neutralization, or mitigation of organizational conflicts of interest. A final regulatory flexibility analysis has, therefore, not been performed.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the final rule contains information collection requirements.

Title: Defense Federal Acquisition Regulation Supplement (DFARS); Organizational Conflicts of Interest in Major Defense Acquisition Programs.

Number of Respondents: 150.

Responses per Respondent: 3.

Annual Responses: 750.

Average Burden per Response: 20.

Annual Burden Hours: 15,000.

Needs and Uses: DoD needs the information required by 252.209–7008 to identify and resolve organizational conflicts of interest, as required by section 207 of the Weapon Systems Acquisition Reform Act of 2009.

The burden hours are substantially reduced in comparison to the proposed rule because the final rule only addresses organizational conflicts of interest in major defense acquisition programs.

The information collection requirements for this final rule have been approved under OMB Clearance Number 0704–0477, Organizational Conflicts of Interest in Major Defense Acquisition Programs ICR.

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 209 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Sections 209.571, 209.571–0, 209.571–1, 209.571–2, 209.571–3, 209.571–4, 209.571–5, 209.571–6, and 209.571–7, and 209.571–8 are added to read as follows:

* * * * *

209.571 Organizational conflicts of interest in major defense acquisition programs.
209.571–0 Scope of subpart.
209.571–1 Definitions.
209.571–2 Applicability.
209.571–4 Mitigation.
209.571–5 Lead system integrators.
209.571–6 Identification of organizational conflicts of interest.
209.571–7 Systems engineering and technical assistance contracts.
209.571–8 Solicitation provision and contract clause.

* * * * *

209.571 Organizational conflicts of interest in major defense acquisition programs.

209.571–0 Scope of subpart.

This subpart implements section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111–23).

209.571–1 Definitions.

As used in this section—

"Lead system integrator" is defined in the clause at 252.209–7007, Prohibited Financial Interests for Lead System Integrators.

"Major Defense Acquisition Program" is defined in 10 U.S.C. 2430.

"Major subcontractor" is defined in the clause at 252.209–7009, Organizational Conflict of Interest—Major Defense Acquisition Program.

"Pre-Major Defense Acquisition Program" means a program that is in the Materiel Solution Analysis or Technology Development Phases preceding Milestone B of the Defense Acquisition System and has been identified to have the potential to become a major defense acquisition program.

"Systems engineering and technical assistance."

(1) "Systems engineering" means an interdisciplinary technical effort to evolve and verify an integrated and total life cycle balanced set of system, people, and process solutions that satisfy customer needs.

(2) "Technical assistance" means the acquisition support, program management support, analyses, and other activities involved in the management and execution of an acquisition program.

(3) "Systems engineering and technical assistance"—

(i) Means a combination of activities related to the development of technical information to support various acquisition processes. Examples of systems engineering and technical assistance activities include, but are not limited to, supporting acquisition efforts such as—

(A) Deriving requirements;

(B) Performing technology assessments;

(C) Developing acquisition strategies;
(D) Conducting risk assessments;
(E) Developing cost estimates;
(F) Determining specifications;
(G) Evaluating contractor performance and conducting independent verification and validation;
(H) Directing other contractors' (other than subcontractors) operations;
(I) Developing test requirements and evaluating test data;
(J) Developing work statements (but see paragraph (ii)(B) of this definition).
(ii) Does not include—
(A) Design and development work of design and development contractors, in accordance with FAR 9.505–2(a)(3) or FAR 9.505–2(b)(3), and the guidance at PGI 209.571–7; or
(B) Preparation of work statements by contractors, acting as industry representatives, under the supervision and control of Government representatives, in accordance with FAR 9.505–2(b)(1)(ii).

209.571–2 Applicability.

(a) This subsection applies to major defense acquisition programs.
(b) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

209.571–3 Policy.

It is DoD policy that—
(a) Agencies shall obtain advice on major defense acquisition programs and pre-major defense acquisition programs from sources that are objective and unbiased; and
(b) Contracting officers generally should seek to resolve organizational conflicts of interest in a manner that will promote competition and preserve DoD access to the expertise and experience of qualified contractors. Accordingly, contracting officers should, to the extent feasible, employ organizational conflict of interest resolution strategies that do not unnecessarily restrict the pool of potential offerors in current or future acquisitions. Further, contracting activities shall not impose across-the-board restrictions or limitations on the use of particular resolution methods, except as may be required under 209.571–7 or as may be appropriate in particular acquisitions.

209.571–4 Mitigation.

(a) Mitigation is any action taken to minimize an organizational conflict of interest. Mitigation may require Government action, contractor action, or a combination of both.
(b) If the contracting officer and the contractor have agreed to mitigation of an organizational conflict of interest, a Government-approved Organizational Conflict of Interest Mitigation Plan, reflecting the actions a contractor has agreed to take to mitigate a conflict, shall be incorporated into the contract.
(c) If the contracting officer determines, after consultation with agency legal counsel, that the otherwise successful offeror is unable to effectively mitigate an organizational conflict of interest, then the contracting officer, taking into account both the instant contract and longer term Government needs, shall use another approach to resolve the organizational conflict of interest, select another offeror, or request a waiver in accordance with FAR 9.503 (but *see* statutory prohibition in 209.571–7, which cannot be waived).
(d) For any acquisition that exceeds $1 billion, the contracting officer shall brief the senior procurement executive before determining that an offeror's mitigation plan is unacceptable.

209.571–5 Lead system integrators.

For limitations on contractors acting as lead systems integrators, *see* 209.570.

209.571–6 Identification of organizational conflicts of interest.

When evaluating organizational conflicts of interest for major defense acquisition programs or pre-major defense acquisition programs, contracting officers shall consider—
(a) The ownership of business units performing systems engineering and technical assistance, professional services, or management support services to a major defense acquisition program or a pre-major defense acquisition program by a contractor who simultaneously owns a business unit competing (or potentially competing) to perform as—
(1) The prime contractor for the same major defense acquisition program; or
(2) The supplier of a major subsystem or component for the same major defense acquisition program.
(b) The proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same parent corporate entity, particularly the award of a subcontract for software integration or the development of a proprietary software system architecture; and
(c) The performance by, or assistance of, contractors in technical evaluation.

209.571–7 Systems engineering and technical assistance contracts.

(a) Agencies shall obtain advice on systems architecture and systems engineering matters with respect to major defense acquisition programs or pre-major defense acquisition programs from Federally Funded Research and Development Centers or other sources independent of the major defense acquisition program contractor.

(b) *Limitation on Future Contracting.* (1) Except as provided in paragraph (c) of this subsection, a contract for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program shall prohibit the contractor or any affiliate of the contractor from participating as a contractor or major subcontractor in the development or production of a weapon system under such program.

(2) The requirement in paragraph (b)(1) of this subsection cannot be waived.

(c) *Exception.* (1) The requirement in paragraph (b)(1) of this subsection does not apply if the head of the contracting activity determines that—

(i) An exception is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror; and

(ii) Based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice, as required by 209.571–3(a), without a limitation on future participation in development and production.

(2) The authority to make this determination cannot be delegated.

209.571–8 Solicitation provision and contract clause.

(a) Use the provision at 252.209–7008, Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program, if the solicitation includes the clause at 252.209–7009, Organizational Conflict of Interest—Major Defense Acquisition Program; and

(b) Use the clause at 252.209–7009, Organizational Conflict of Interest—Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Sections 252.209–7008 and 252.209–7009 are added to read as follows:

252.209–7008 Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program.

As prescribed in 209.571–8(a), use the following provision:

NOTICE OF PROHIBITION RELATING TO ORGANIZATIONAL CONFLICT OF INTEREST—MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)

(a) *Definitions.* "Major subcontractor" is defined in the clause at 252.209–7009, Organizational Conflict of Interest—Major Defense Acquisition Program.

(b) This solicitation is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) *Prohibition.* As required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111–23), if awarded the contract, the contractor or any affiliate of the contractor is prohibited from participating as a prime contractor or a major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program, unless the offeror submits, and the Government approves, an Organizational Conflict of Interest Mitigation Plan.

(d) *Request for an exception.* If the offeror requests an exception to the prohibition of paragraph (c) of this provision, then the offeror shall submit an Organizational Conflict of Interest Mitigation Plan with its offer for evaluation.

(e) *Incorporation of Organizational Conflict of Interest Mitigation Plan in contract.* If the apparently successful offeror submitted an acceptable Organizational Conflict of Interest Mitigation Plan, and the head of the contracting activity determines that DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror in accordance with FAR 209.571–7(c), then the Contracting Officer will incorporate the Organizational Conflict of Interest Mitigation Plan into the resultant contract, and paragraph (d) of the clause at 252.209–7009 will become applicable.

(End of provision)

252.209–7009 Organizational Conflict of Interest—Major Defense Acquisition Program.

As prescribed in 209.571–8(b), use the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST—MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)

(a) *Definition.*

"Major subcontractor," as used in this clause, means a subcontractor that is awarded a subcontract that equals or exceeds

(1) Both the cost or pricing data threshold and 10 percent of the value of the contract under which the subcontracts are awarded; or

(2) $50 million.

(b) This contract is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) *Prohibition.* Except as provided in paragraph (d) of this clause, as required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111–23), the Contractor or any affiliate of the Contractor is prohibited from participating as a prime contractor or major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program.

(d) *Organizational Conflict of Interest Mitigation Plan.* If the Contractor submitted an acceptable Organizational Conflict of Interest Mitigation Plan that has been incorporated into this contract, then the prohibition in paragraph (c) of this clause does not apply. The Contractor shall comply with the Organizational Conflict of Interest Mitigation Plan. Compliance with the Organizational Conflict of Interest Mitigation Plan is a material requirement of the contract. Failure to comply may result in the Contractor or any affiliate of the Contractor being prohibited from participating as a contractor or major subcontractor in the development or production of a weapon system under the program, in addition to any other remedies available to the Government for noncompliance with a material requirement of a contract.

(End of clause)

[FR Doc. 2010–32713 Filed 12–28–10; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AG80

Defense Federal Acquisition Regulation Supplement; Foreign Participation in Acquisitions in Support of Operations in Afghanistan (DFARS Case 2009–D012)

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement—

- Waiver of section 302(a) of the Trade Agreements Act of 1979, as amended, which prohibits acquisitions of products or services from nondesignated countries, in order to allow acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states; and
- Determination of inapplicability of the Balance of Payments Program evaluation factor to offers of products (other than arms, ammunition, or war materials) from the SC/CASA states to support operations in Afghanistan.

DATES: *Effective Date:* December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350. Please cite DFARS Case 2009–D012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule on January 6, 2010 (75 FR 832) to implement—

- A waiver of the procurement prohibition of section 302(a) of the Trade Agreements Act of 1979 with regard to acquisitions by DoD or GSA, on behalf of DoD, in support of operations in Afghanistan from the following nine South Caucasus/Central and South Asian (SC/CASA) states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan; and
- A determination by the Deputy Secretary of Defense that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program to offers of products (other than arms, ammunition, or war materials) and construction materials from these SC/CASA states acquired in direct support of operations in Afghanistan.

In addition, the proposed rule made corrections to—

- Alternate I of 252.225–7035, to delete the phrase "Australian or" from paragraph (c)(2)(i); and
- Alternate I of 252.225–7045, to add in paragraph (b), line 4, that the Bahrain Free Trade Agreement does not apply.

DoD did not receive any comments on the proposed rule.

Therefore, DoD is finalizing the proposed rule with no substantive change. The final rule does incorporate the following editorial and technical corrections:

- Incorporates the current DFARS baseline.
- Amends various clause prefaces to reference the correct clause prescriptions.
- Amends 225.1101(6)(i) to reference the World Trade Organization (WTO) Government Procurement Agreement (GPA) rather than the Trade Agreements Act, in conformance with FAR 225.1101(c)(1).
- Amends paragraph (d), added by Alternate II to the clause at 252.225–

7021, to limit applicability. Only contractors from an SC/CASA state are required to notify the government of the SC/CASA state with regard to the benefit of providing reciprocal procurement opportunities to U.S. products and services, in conformance with the requirement imposed by the United States Trade Representative.

• Corrects the provision and clause at 252.225–7035 and 252.225–7036, so that Peruvian end products are not erroneously treated as eligible products in acquisitions that do not exceed the WTO GPA threshold (see DFARS Case 2008–D046, published at 74 FR 37650 and 75 FR 3179 for initial implementation of the Peruvian Free Trade Agreement). The threshold for end products for the Peruvian Free Trade Agreement, like the Free Trade Agreements of Bahrain and Morocco, is equal to the threshold of the WTO GPA. Therefore, these trade agreements are only in effect for acquisitions that exceed the WTO GPA threshold (covered by DFARS provision and clause 252.225–7020 and 252.225–7021). This is a technical amendment to this DFARS provision and clause in order to conform to the trade threshold for the Peruvian Free Trade Agreement that is at FAR 25.402(b) and to be consistent with the corresponding FAR provision and clause at 52.225–3 and 52.225–4.

II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review by the Office of Management and Budget under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule only impacts acquisitions that are in support of operations in Afghanistan, allowing acquisition of products and services from the SC/CASA states. The minimal information collection requirement applies only to contractors that are from an SC/CASA state, and does not apply to U.S. small business concerns. DoD did not receive any comments from small businesses or other interested parties.

IV. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule modifies information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, the impact on existing approved information collection requirements (OMB clearance 0704–0229) is expected to be negligible.

In addition, this final rule contains a new information collection requirement that has received approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* (OMB Clearance Number 0704–0475). DoD did not receive any comments on the proposed information collection requirement.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Amend section 225.003 by adding paragraphs (14) through (16) to read as follows:

225.003 Definitions.

* * * * *

(14) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) *South Caucasus/Central and South Asian (SC/CASA) state construction material* means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(16) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

■ 3. Section 225.401 is revised to read as follows:

225.401 Exceptions.

(a)(2)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

(*1*) Purchase from foreign sources is restricted by statute (see subpart 225.70);

(*2*) Another exception in FAR 25.401 applies to the acquisition; or

(*3*) Competition from foreign sources is restricted under subpart 225.71.

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704–1.

■ 3. Amend section 225.403 by adding paragraph (c)(iii) to read as follows:

225.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c) * * *

(iii) The acquisition is in support of operations in Afghanistan (see 225.7704–1).

■ 4. Amend section 225.502 by adding paragraph (a) to read as follows:

225.502 Application.

(a) Whenever the acquisition is in support of operations in Afghanistan, treat the offers of end products from South Caucasus or Central and South Asian states listed in 225.401–70 the same as qualifying country offers.

* * * * *

■ 5. Revise section 225.1101 to read as follows:

225.1101 Acquisition of supplies.

(1)(i) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001,

Buy American Act and Balance of Payments Program.

(ii) Use the provision with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(2)(i) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts unless—

(A) All line items will be acquired from a particular source or sources under the authority of FAR 6.302–3;

(B) All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

(C) An exception to the Buy American Act or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501);

(D) One or both of the following clauses will apply to all line items in the contract:

(*1*) 252.225–7021, Trade Agreements.

(*2*) 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program; or

(E) All line items will be acquired using a procedure specified in 225.7703–1(a).

(ii) Use the clause with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) 252.225–7021, Trade Agreements.

(iii) 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(4) Use the clause at 252.225–7013, Duty-Free Entry, instead of the clause at FAR 52.225–8. Do not use the clause for acquisitions of supplies that will not enter the customs territory of the United States.

(5)(i) Except as provided in paragraph (7) of this section, use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.

(ii) Use the provision with its Alternate I when the acquisition is of end products in support of operations in Afghanistan.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, if the World Trade Organization Government Procurement Agreement applies.

(ii) Use the clause with its Alternate I in solicitations and contracts that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225–7024 has been modified to provide a preference only for the products of Afghanistan.

(iii) Use the clause with its Alternate II when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.

(iv) Do not use the clause if—

(A) Purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction; or

(B) The clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, is included in the solicitation and contract.

(v) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements, with its Alternate I.

(8) Use the provision at 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, in solicitations if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Use the clause at 252.225–7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(10)(i) Use the provision at 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations that include the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(ii) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(iii) Use the provision with its alternate II when the clause at 252.225–7036 is used with its Alternate II.

(iv) Use the provision with its Alternate III when the clause at 252.225–7036 is used with its Alternate III.

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $203,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds $70,079, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds $25,000 but is less than $70,079, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III.

(ii) Do not use the clause if—

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction;

(B) Acquiring information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and the same provision in subsequent appropriations acts); or

(C) Using a procedure specified in 225.7703–1(a).

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of a Free Trade Agreement to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American Act—Free Trade Agreements—Balance of Payments Program clause.

■ 6. Amend section 225.7501 by:

■ a. Redesignating paragraph (b)(1)(iii) as (b)(1)(iv);

■ b. Adding new paragraph (b)(1)(iii); and

■ c. Revising paragraph (b)(2) to read as follows:

225.7501 Policy.

* * * * *

(b) * * *
(1) * * *
(iii) If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401–70 (see 225.7704–2); or
* * * * *
(2) The construction material is an eligible product or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704–2); or
* * * * *

■ 7. Revise section 225.7503 to read as follows:

225.7503 Contract clauses.

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a)(1) Use the clause at 252.225–7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than $7,804,000.

(2) Use the clause with its Alternate I if the acquisition is in support of operations in Afghanistan.

(b)(1) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of $7,804,000 or more, except as provided in 225.7503(b)(4).

(2) For acquisitions with a value of $7,804,000 or more, but less than $9,110,318, use the clause with its Alternate I, unless the acquisition is in support of operations in Afghanistan, use the clause with its Alternate III.

(3) If the acquisition is for construction with a value of more than $8,817,449 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of $7,443,000 or more, but less than $8,817,449, and is in support of operations in Afghanistan, use the clause with its Alternate III.

■ 8. Revise section 225.7700 to read as follows:

225.7700 Scope.

This subpart implements—

(a) Section 886 and section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181); and

(b) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisitions in support of operations in Afghanistan.

■ 9. Add sections 225.7704, 225.7704–1, 225.7704–2, and 225.7704–3 to read as follows:

225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.

225.7704–1 Applicability of trade agreements.

As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see subpart 225.4) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

225.7704–2 Applicability of Balance of Payments Program.

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see subpart 225.75) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in 225.401–70) and construction materials from the SC/CASA states that are being acquired by or on behalf of DoD in direct support of operations in Afghanistan.

225.7704–3 Solicitation provisions and contract clauses.

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Program solicitation provisions and contract clauses prescribed at 225.1101 and 225.7503.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 252.212–7001 as follows:

■ a. Redesignate paragraph (b)(5) as paragraph (b)(5)(i);

■ b. Add paragraph (b)(5)(ii);

■ c. Amend the clause date in paragraph (11)(i) by removing "(NOV 2009)" and adding in its place "(DEC 2010)";

■ d. Revise paragraph (11)(ii);

■ e. Amend the clause date in paragraph (14)(ii) by removing "(JUL 2009)" and adding in its place "(DEC 2010)"; and

■ f. Add paragraphs (14)(iii) and (iv) to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *
(b) * * *
(5) * * *
(ii) ____ Alternate I (DEC 2010) of 252.225–7001.
* * * * *
(11) * * *
(ii) ____ Alternate I (DEC 2010) of 252.225–7021.
* * * * *
(14) * * *
(iii) ____ Alternate II (DEC 2010) of 252.225–7036.
(iv) ____ Alternate III (DEC 2010) of 252.225–7036.
* * * * *

■ 11. Amend section 252.225–7000 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1)(i), use the following provision:
* * * * *

ALTERNATE I (DEC 2010)

As prescribed in 225.1101(1)(ii), add the terms "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" in paragraph (a) and replace the phrase "qualifying country end products" in paragraphs (b)(2) and (c)(2) with the phrase "qualifying country end products or SC/CASA state end products."

■ 12. Amend section 252.225–7001 by revising the introductory text and adding ALTERNATE I to read as follows:

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2)(i), use the following clause:
* * * * *

ALTERNATE I (DEC 2010)

As prescribed in 225.1101(2)(ii), add the following definitions to paragraph (a) and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(a)(10) "South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(11) "South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another

country, has been substantially transformed in an SC/CASA state 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end product, the Contractor shall deliver a qualifying country end product an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

■ 13. Amend section 252.225–7020 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5)(i), use the following provision:

* * * * *

ALTERNATE I (DEC 2010)

As prescribed in 225.1101(5)(ii), substitute the following paragraphs (a), (b)(2), and (c) for paragraph (a), (b)(2), and (c) of the basic clause:

(a) *Definitions.* "Designated country end product," "nondesignated country end product," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "U.S.-made end product" have the meanings given in the Trade Agreements clause of this solicitation.

(b)(2) Will consider only offers of end products that are U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreement clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number) _____

(Country of Origin) _____

(ii) The following are other nondesignated country end products:

(Line Item Number) _____

(Country of Origin) _____

■ 14. Amend section 252.225–7021 by revising the introductory text and adding Alternate II at the end of the section to read as follows:

252.225–7021 Trade Agreements.

As prescribed in 225.1101(6)(i), use the following clause:

* * * * *

ALTERNATE II (DEC 2010)

As prescribed in 225.1101(6)(iii), add the following new definitions to paragraph (a), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d):

(a)(14) "South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) "South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

■ 15. Amend section 252.225–7035 as follows:

■ a. Revise the introductory text;

■ b. Revise the clause date;

■ c. Revise paragraph (a);

■ d. Revise paragraph (b)(2);

■ e. Revise paragraph (c)(2)(ii);

■ f. Revise Alternate I; and

■ g. Add Alternates II and III at the end of the section to read as follows:

252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 225.1101(10)(i), use the following provision:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DEC 2010)

(a) *Definitions. Bahrainian end product, commercially available off-the-shelf (COTS) item, component, domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Moroccan end product, Peruvian end product, qualifying country end product,* and *United States,* as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) * * *

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) * * *

(2) * * *

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products:

(Line Item Number) _____

(Country of Origin) _____

* * * * *

ALTERNATE I (DEC 2010)

As prescribed in 225.1101(10)(ii), substitute the phrase "Canadian end product" for the phrases "Bahrainian end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Moroccan end product, and "Peruvian end products" in paragraph (a) of the basic provision; and substitute the phrase "Canadian end products" for the phrase "Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision, and delete the phrase "Australian or" from paragraph (c)(2)(i) of the basic provision.

ALTERNATE II (DEC 2010)

As prescribed in 225.1101(10)(iii), add the terms "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying

country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number) _____

(Country of Origin) _____

(End of provision)

ALTERNATE III (DEC 2010)

As prescribed in 225.1101(10)(iv), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions. Canadian end product, commercially available off-the-shelf (COTS) item, domestic end product, foreign end product, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States* have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number) _____

(Country of Origin) _____

(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number) _____

(Country of Origin) _____

■ 16. Amend section 252.225–7036 as follows:

■ a. Revise the introductory text;

■ b. Revise the clause date;

■ c. Redesignate paragraph (a)(10) as paragraph (a)(11);

■ d. Add new paragraph (a)(10);

■ e. Redesignate paragraphs (a)(11) through (a)(13) as paragraphs (a)(12) through (a)(14); and

■ f. Add Alternates II and III at the end of the section to read as follows:

252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.

As prescribed in 225.1101(11)(i)(A), use the following clause:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (DEC 2010)

(a) * * *

(10) *Peruvian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(11) *Qualifying country* means any country set forth in the definition of "qualifying country" in Defense FAR Supplement 225.003.

* * * * *

ALTERNATE II (DEC 2010)

As prescribed in 225.1101(11)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

ALTERNATE III (DEC 2010)

As prescribed in 225.1101(11)(i)(B), add the following definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause,

(a)(14) *Canadian end product,* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(15) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(16) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor's option, a domestic end product.

■ 17. Amend section 252.225–7044 by revising the introductory text; revising the clause date and adding Alternate I at the end of the section to read as follows:

252.225–7044 Balance of Payments Program—Construction Material.

As prescribed in 225.7503(a)(1), use the following clause:

* * * * *

ALTERNATE I (DEC 2010)

As prescribed in 225.7503(a)(2), add the following definitions to paragraph (a) and replace the phrase "domestic construction material" in the second sentence of paragraph (b) with the phrase "domestic construction material or SC/CASA state construction material."

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"SC/CASA state construction material" means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

■ 18. Amend section 252.225–7045 by revising the introductory text; revising Alternate I; and adding Alternate II and Alternate III at the end of the section to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

As prescribed in 225.7503(b)(1), use the following clause:

* * * * *

ALTERNATE I (DEC 2010)

As prescribed in 225.7503(b)(2), add the following definition of "Bahrainian or Mexican construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

Bahrainian or Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none".]

ALTERNATE II (DEC 2010)

As prescribed in 225.7503(b)(3), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

(d) The Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

ALTERNATE III (DEC 2010)

As prescribed in 225.7503(b)(4), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(d) The Contractor shall inform its Government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its Government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

[FR Doc. 2010–32711 Filed 12–28–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101006495–0498–01]

RIN 0648–BA31

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Groundfish Fisheries Off Alaska; Correction

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

ACTION: Correction to interim final rule.

SUMMARY: This document contains corrections to the interim final rule pertaining to Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Groundfish Fisheries Off Alaska published on December 13, 2010. These corrections

amend one error in the preamble to the interim final rule and one typographical error and content within regulatory tables to eliminate potential confusion by the public.

DATES: Effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

An interim final rule was published in the **Federal Register** on December 13, 2010 (75 FR 77535), to implement Steller sea lion protection measures to ensure that the Bering Sea and Aleutian Islands management area (BSAI) groundfish fisheries off Alaska are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify its designated critical habitat. NMFS is correcting errors identified in the preamble to the interim final rule and the regulatory text.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. These errors should be corrected immediately to eliminate potential confusion by the regulated public. If the effective date for these corrections is delayed to solicit prior public comment, these technical errors will not be corrected by the effective date of this final rule, thereby undermining the conservation and management objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. Good cause to waive prior notice and the opportunity for public comment for the interim final rule corrected by this action can be found in 75 FR 77535 (December 13, 2010).

The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

Summary of Errors

NMFS is correcting errors and is not making substantive changes to the interim final rule published on December 13, 2010 (75 FR 77535). The corrections to Tables 5, 6, and 12 to 50 CFR part 679 are listed below. These corrections revise coordinates for Steller sea lion sites, revise footnotes, add degree symbols, add lines between rows, and remove a 3-nm groundfish fishing closure in Table 12 to 50 CFR part 679, which was erroneously added by the interim final rule.

On page 77547, in Table 5 to part 679, seventh row (Great Sitkin I.), third column, we are replacing value "52 06.00 N" to read "52 06.60 N"; in the fourth column we are replacing value "176 10.50 W" to read "176 07.00 W", and in the fifth column we are replacing value "52 06.60 N" to read "52 07.00 N".

On page 77550, in Table 5 to part 679, first row (Bird I.), fourth column, we are replacing value "163 17.2 W" to read "163 17.15 W"; in the third row (South Rocks), fourth column, we are replacing value "162 41.3 W" to read "162 41.25 W"; in the fourth row (Clubbing Rocks (S)), fourth column, we are replacing value "162 26.7 W" to read "162 26.74 W"; and in the fifth row (Clubbing Rocks (N)), fourth column, we are replacing value "162 26.7 W" to read "162 26.72 W".

On page 77552, in Table 5 to part 679, fourth row (Ushagat I./SW), third column, we are replacing value "58 54.75" to read "58 54.75 N".

On page 77553, in Table 5 to part 679, third row (Rugged Island), we are adding value in the fifth column to read "59 51.00 N" and adding value in the sixth column to read "149 24.70 W".

On page 77557, in Table 6 to part 679, footnote 6(a), we are replacing "0 nn" to read "0 nm".

On page 77557, in Table 6 to part 679, footnote 7, we are replacing the second subparagraph "(a)" to read "(b)".

On page 77558, in Table 12 to part 679, we are removing the sixteenth row (Tanaga I./Bumpy Pt.).

On page 77559, in Table 12 to part 679, fourteenth row (Clubbing Rocks (S)), fourth column, we are replacing value "162 26.7 W" to read "162 26.74 W"; and, in the fifteenth row (Clubbing Rocks (N)), fourth column, we are replacing value "162 26.7 W" to read "162 26.72 W".

On page 77560, in Table 12 to part 679, second row (Choweit I.), fifth column, we are replacing value "55 00.30 N" to read "56 00.30 N".

In addition to these regulatory corrections, we are correcting a statement in the preamble to the interim final rule (74 FR 77535, December 13, 2010) that incorrectly referenced existing Pacific cod trawl seasons. On page 77539, in the second column, correct the last sentence to read:

"Waters that are 10 nm to 20 nm from Steller sea lion sites and that occur in this one degree longitude area are closed to directed fishing for Pacific cod with trawl gear in the C season (June 10, 1200 hours, A.l.t., to November 1, 1200 hours, A.l.t.), but are open during the A and B seasons."

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 22, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

Correction

■ Accordingly, the interim final rule, FR Doc. 2010–31226, published on December 13, 2010 (75 FR 77535), to be effective January 1, 2011, is corrected as follows:

§ 679.20 [Corrected]

■ 1. In § 679.20, on page 77543, third column, instruction 5, first line, correct "§ 79.20" to read "§ 679.20".

■ 2. In 50 CFR part 679, on pages 77545 through 77560, correctly revise Tables 5, 6, and 12 to read as follows:

BILLING CODE 3510–22–P

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63° 04.00 N	168° 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63° 18.00 N	171° 26.00 W			20	20	20
Hall I.	BS	60° 37.00 N	173° 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57° 06.00 N	170° 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57° 15.00 N	170° 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57° 11.00 N	169° 56.00 W			10	3	3
St. George I./Dalnoi Pt.	BS	56° 36.00 N	169° 46.00 W			3	3	3
St. George I./S. Rookery	BS	56° 33.50 N	169° 40.00 W			3	3	3
Cape Newenham	BS	58° 39.00 N	162° 10.50 W			20	20	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Round (Walrus Islands)	BS	58° 36.00 N	159° 58.00 W			20	20	20
Kiska I./Cape St. Stephen[15,17]	AI	51° 52.50 N	177° 12.70 E	51° 53.50 N	177° 12.00 E	20	6, 20	6, 20
Kiska I. Sobaka & Vega[15,17]	AI	51° 49.50 N	177° 19.00 E	51° 48.50 N	177° 20.50 E	20	6, 20	6, 20
Kiska I./Lief Cove[15,17]	AI	51° 57.16 N	177° 20.41 E	51° 57.24 N	177° 20.53 E	20	6, 20	6, 20
Kiska I./Sirius Pt.[15]	AI	52° 08.50 N	177° 36.50 E			20	6, 20	6, 20
Tanadak I. (Kiska)[15]	AI	51° 56.80 N	177° 46.80 E			20	6, 20	6, 20
Segula I.[15]	AI	51° 59.90 N	178° 05.80 E	52° 03.06 N	178° 08.80 E	20	6, 20	6, 20
Ayugadak Point[15]	AI	51° 45.36 N	178° 24.30 E			20	6, 20	6, 20
Rat I./Krysi Pt.[15]	AI	51° 49.98 N	178° 12.35 E			20	6, 20	6, 20
Little Sitkin I.[15]	AI	51° 59.30 N	178° 29.80 E			20	6, 20	6, 20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Amchitka I./Column[15]	AI	51° 32.32 N	178° 49.28 E			20	6, 20	6, 20
Amchitka I./East Cape[15]	AI	51° 22.26 N	179° 27.93 E	51° 22.00 N	179° 27.00 E	20	6, 20	6, 20
Amchitka I./Cape	AI	51° 24.46 N	179° 24.21 E			20	6, 20	6, 20
Semisopochnoi/Petrel Pt.[15]	AI	52° 01.40 N	179° 36.90 E	52° 01.50 N	179° 39.00 E	20	6, 20	6, 20
Semisopochnoi I./Pochnoi Pt.[15]	AI	51° 57.30 N	179° 46.00 E			20	6, 20	6, 20
Amatignak I./Nitrof Pt.[15]	AI	51° 13.00 N	179° 07.80 W			20	6, 20	6, 20
Unalga & Dinkum	AI	51° 33.67 N	179° 04.25 W	51° 35.09 N	179° 03.66 W	20	6, 20	6, 20
Ulak I./Hasgox Pt.[15]	AI	51° 18.90 N	178° 58.90 W	51° 18.70 N	178° 59.60 W	20	6, 20	6, 20
Kavalga I.[15]	AI	51° 34.50 N	178° 51.73 W	51° 34.50 N	178° 49.50 W	20	6, 20	6, 20
Tag I.[15]	AI	51° 33.50 N	178° 34.50 W			20	6, 20	6, 20
Ugidak I.[14,15]	AI	51° 34.95 N	178° 30.45 W			20	6, 20	6, 20
Gramp Rock[14,15]	AI	51° 28.87 N	178° 20.58 W			20	6, 20	6, 20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Tanaga I./Bumpy Pt.[14,15]	AI	51° 55.00 N	177° 58.50 W	51° 55.00 N	177° 57.10 W	20, 10	6, 20	6, 20
Bobrof I.[14,15]	AI	51° 54.00 N	177° 27.00 W			20, 10	6, 20	6, 20
Kanaga I./Ship Rock[14,15]	AI	51° 46.70 N	177° 20.72 W			20, 10	6, 20	6, 20
Kanaga I./North Cape[14,15,16]	AI	51° 56.50 N	177° 09.00 W			20, 10	6, 20	6, 20
Adak I.[14,15,16]	AI	51° 35.50 N	176° 57.10 W	51° 37.40 N	176° 59.60 W	20, 10	20, 10	20, 10
Little Tanaga Strait[14,16]	AI	51° 49.09 N	176° 13.90 W			20, 10	20, 10	20, 10
Great Sitkin I.[14,16]	AI	52° 06.60 N	176° 07.00 W	52° 07.00 N	176° 07.00 W	20, 10	20, 10	20, 10
Anagaksik I.[14,16]	AI	51° 50.86 N	175° 53.00 W			20, 10	20, 10	20, 10
Kasatochi I.[14,16]	AI	52° 11.11 N	175° 31.00 W			20, 10	20, 10	20, 10
Atka I./N. Cape[14,16]	AI	52° 24.20 N	174° 17.80 W			20, 10	20, 10	20, 10
Amlia I./Sviech. Harbor[4,14,16]	AI	52° 01.80 N	173° 23.90 W			20, 10	20, 10	20, 10
Sagigik I.[4,14,16]	AI	52° 00.50 N	173° 09.30 W			20, 10	20, 10	20, 10

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Amlia I./East[4, 14,16]	AI	52° 05.70 N	172° 59.00 W	52° 05.75 N	172° 57.50 W	20, 10	20, 10	20, 10
Tanadak I. (Amlia)[4, 14,16]	AI	52° 04.20 N	172° 57.60 W			20, 10	20, 10	20, 10
Agligadak I.[4, 14,16]	AI	52° 06.09 N	172° 54.23 W			20, 10	20, 10	20, 10
Seguam I./Saddleridge Pt.[4, 14,16]	AI	52° 21.05 N	172° 34.40 W	52° 21.02 N	172° 33.60 W	20, 10	20, 10	20, 10
Seguam I./Finch Pt.[14,16]	AI	52° 23.40 N	172° 27.70 W	52° 23.25 N	172° 24.30 W	20, 10	20, 10	20, 10
Seguam I./South Side[14,16]	AI	52° 21.60 N	172° 19.30 W	52° 15.55 N	172° 31.22 W	20, 10	20, 10	20, 10
Amukta I. & Rocks[14,16]	AI	52° 27.25 N	171° 17.90 W			20, 10	20, 10	20, 10
Chagulak I.[14,16]	AI	52° 34.00 N	171° 10.50 W			20, 10	20, 10	20, 10
Yunaska I.[14,16]	AI	52° 41.40 N	170° 36.35 W			20, 10	20, 10	20, 10
Uliaga[5, 13]	BS	53° 04.00 N	169° 47.00 W	53° 05.00 N	169° 46.00 W	10	20	20
Chuginadak[13]	GOA	52° 46.70 N	169° 41.90 W			20	10	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kagamil[5, 13]	BS	53° 02.10 N	169° 41.00 W			10	20	20
Samalga	GOA	52° 46.00 N	169° 15.00 W			20	10	20
Adugak I.[5]	BS	52° 54.70 N	169° 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53° 25.00 N	168° 24.50 W			BA	BA	BA
Ogchul I.	GOA	52° 59.71 N	168° 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53° 55.69 N	168° 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53° 15.96 N	167° 57.99 W			20	10	20
Emerald I.[12, 9]	GOA	53° 17.50 N	167° 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53° 13.64 N	167° 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 12]	BS	53° 58.40 N	166° 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54° 08.10 N	166° 06.19 W	54° 09.10 N	166° 05.50 W	10	10	3
Unalaska I./Cape	GOA	53° 50.50 N	166° 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53° 52.20 N	166° 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54° 03.39 N	165° 59.65 W	54° 03.70 N	166° 03.68 W	20	10	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Akun I./Billings Head	BS	54° 17.62 N	165° 32.06 W	54° 17.57 N	165° 31.71 W	10	3	3
Rootok[9]	GOA	54° 03.90 N	165° 31.90 W	54° 02.90 N	165° 29.50 W	20	10	20
Tanginak I.[9]	GOA	54° 12.00 N	165° 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54° 09.60 N	164° 59.00 W	54° 09.12 N	164° 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54° 34.30 N	164° 56.80 W			10	3	3
Aiktak[9]	GOA	54° 10.99 N	164° 51.15 W			20	10	20
Ugamak I.[9]	GOA	54° 13.50 N	164° 47.50 W	54° 12.80 N	164° 47.50 W	20	10	20
Round (GOA)[9]	GOA	54° 12.05 N	164° 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55° 27.82 N	163° 12.10 W			10	7	7
Amak I. And rocks	BS	55° 24.20 N	163° 09.60 W	55° 26.15 N	163° 08.50 W	10	3	3
Bird I.	GOA	54° 40.00 N	163° 17.15 W			10		
Caton I.	GOA	54° 22.70 N	162° 21.30 W			3	3	
South Rocks	GOA	54° 18.14 N	162° 41.25 W			10		
Clubbing Rocks (S)	GOA	54° 41.98 N	162° 26.74 W			10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Clubbing Rocks (N)	GOA	54° 42.75 N	162° 26.72 W			10	3	3
Pinnacle Rock	GOA	54° 46.06 N	161° 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54° 49.30 N	161° 42.73 W			10		
Olga Rocks	GOA	55° 00.45 N	161° 29.81 W	54° 59.09 N	161°30.89 W	10		
Jude I.	GOA	55° 15.75 N	161° 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55° 04.70 N	160° 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54° 54.20 N	160° 15.40 W	54° 56.00 N	160° 15.00 W	3	3	3
The Whaleback	GOA	55° 16.82 N	160° 05.04 W			3	3	3
Chernabura I.	GOA	54° 45.18 N	159° 32.99 W	54° 45.87 N	159° 35.74 W	20	3	3
Castle Rock	GOA	55° 16.47 N	159° 29.77 W			3	3	
Atkins I.	GOA	55° 03.20 N	159° 17.40 W			20	3	3
Spitz I.	GOA	55° 46.60 N	158° 53.90 W			3	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Mitrofania	GOA	55° 50.20 N	158° 41.90 W			3	3	3
Kak	GOA	56° 17.30 N	157° 50.10 W			20	20	3
Lighthouse Rocks	GOA	55° 46.79 N	157° 24.89 W			20	20	20
Sutwik I.	GOA	56° 31.05 N	157° 20.47 W	56° 32.00 N	157° 21.00 W	20	20	20
Chowiet I.	GOA	56° 00.54 N	156° 41.42 W	56° 00.30 N	156° 41.60 W	20	20	20
Nagai Rocks	GOA	55° 49.80 N	155° 47.50 W			20	20	20
Chirikof I.	GOA	55° 46.50 N	155° 39.50 W	55° 46.44 N	155° 43.46 W	20	20	20
Puale Bay	GOA	57° 40.60 N	155° 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57° 17.20 N	154° 47.50 W			3	3	3
Takli I.	GOA	58° 01.75 N	154° 31.25 W			10		
Cape Kuliak	GOA	58° 08.00 N	154° 12.50 W			10		
Cape Gull	GOA	58° 11.50 N	154° 09.60 W	58° 12.50 N	154° 10.50 W	10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kodiak/Cape Ugat	GOA	57° 52.41 N	153° 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56° 34.30 N	153° 50.96 W			10		
Shakun Rock	GOA	58° 32.80 N	153° 41.50 W			10		
Twoheaded I.	GOA	56° 54.50 N	153° 32.75 W	56° 53.90 N	153° 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59° 00.00 N	153° 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57° 10.20 N	152° 53.05 W			3	3	
Kodiak/Gull Point[7]	GOA	57° 21.45 N	152° 36.30 W			10, 3		
Latax Rocks	GOA	58° 40.10 N	152° 31.30 W			10		
Ushagat I./SW	GOA	58° 54.75 N	152° 22.20 W			10		
Ugak I.[7]	GOA	57° 23.60 N	152° 17.50 W	57° 21.90 N	152° 17.40 W	10, 3		
Sea Otter I.	GOA	58° 31.15 N	152° 13.30 W			10		
Long I.	GOA	57° 46.82 N	152° 12.90 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Sud I.	GOA	58° 54.00 N	152° 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57° 37.90 N	152° 08.25 W			10		
Sugarloaf I.	GOA	58° 53.25 N	152° 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58° 20.53 N	151° 48.83 W			10		
Marmot I.[8]	GOA	58° 13.65 N	151° 47.75 W	58° 09.90 N	151° 52.06 W	15, 20	10	10
Nagahut Rocks	GOA	59° 06.00 N	151° 46.30 W			10		
Perl	GOA	59° 05.75 N	151° 39.75 W			10		
Gore Point	GOA	59° 12.00 N	150° 58.00 W			10		
Outer (Pye) I.	GOA	59° 20.50 N	150° 23.00 W	59° 21.00 N	150° 24.50 W	20	10	10
Steep Point	GOA	59° 29.05 N	150° 15.40 W			10		
Seal Rocks (Kenai)	GOA	59° 31.20 N	149° 37.50 W			10		
Chiswell Islands	GOA	59° 36.00 N	149° 34.00 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Rugged Island	GOA	59° 50.00 N	149° 23.10 W	59° 51.00 N	149° 24.70 W	10		
Point Elrington[10, 11]	GOA	59° 56.00 N	148° 15.20 W			20		
Perry I.[10]	GOA	60° 44.00 N	147° 54.60 W					
The Needle[10]	GOA	60° 06.64 N	147° 36.17 W					
Point Eleanor[10]	GOA	60° 35.00 N	147° 34.00 W					
Wooded I. (Fish I.)	GOA	59° 52.90 N	147° 20.65 W			20	3	3
Glacier Island[10]	GOA	60° 51.30 N	147° 14.50 W					
Seal Rocks (Cordova)[11]	GOA	60° 09.78 N	146° 50.30 W			20	3	3
Cape Hinchinbrook[11]	GOA	60° 14.00 N	146° 38.50 W			20		
Middleton I.	GOA	59° 28.30 N	146° 18.80 W			10		
Hook Point[11]	GOA	60° 20.00 N	146° 15.60 W			20		
Cape St. Elias	GOA	59° 47.50 N	144° 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52°N lat. and 53°N lat. and between 173°30' W long. and 172°30' W long.

[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.

[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.

[7]The trawl closure between 0 nm to 10 nm is effective from January 20, 1200 hours, A.l.t., through June 10, 1200 hours, A.l.t. Trawl closure between 0 nm to 3 nm is effective from September 1, 1200 hours, A.l.t., through November 1, 1200 hours, A.l.t.

[8] The trawl closure between 0 nm to 15 nm is effective from January 20, 1200 hours, A.l.t., to June 10, 1200 hours, A.l.t. Trawl closure between 0 nm to 20 nm is effective from September 1, 1200 hours, A.l.t., through November 1, 1200 hours, A.l.t.

[9]Restriction area includes only waters of the Gulf of Alaska Area.

[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[11] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.

[12] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.

[13]Trawl, hook-and-line, and pot closures around these sites are limited to waters east of 170°0'00" W long.

[14]Trawl closures around Ugidak I., Gramp Rock, and Tanaga I./Bumpy Point are 20 nm west of 178°0'00"W long. year round. Trawl closures around these sites in waters located east of 178°0'00"W. long. are 0 nm to 20 nm June 10, 1200 hours, A.l.t., to November 1, 1200 hours, A.l.t., and 0 nm to 10 nm from January 20, 1200 hours, A.l.t. to June 10, 1200 hours, A.l.t.

[15]In waters west of 177°0'0" W long.

(a) For vessels 60 ft (18.3 m) or greater LOA, the hook- and-line and pot closures are 0 nm to 20 nm from January 1, 0001 hours, A.l.t., to March 1, 1200 hours, A.l.t., and 0 nm to 6 nm from March 1, 1200 hours, A.l.t., to November 1, 1200 hours, A.l.t.

(b) For vessels less than 60 ft (18.3 m), the hook-and-line and pot closures are 0 nm to 6 nm from January 1, 0001 hours, A.l.t., to November 1, 1200 hours, A.l.t.

(c) These restrictions also apply to jig gear vessels of the same LOA.

[16] In waters east of 177°0'0" W long., hook-and-line and pot closures are 0 nm to 20 nm from January 1, 0001 hours, A.l.t., to March 1, 1200 hours, A.l.t., and 0 nm to 10 nm year round. These restrictions also apply to jig gear vessels.

[17]Closures to directed fishing from 0 nm to 20 nm from these sites apply to waters east of 177°0'00" E long. Retention of Pacific cod is prohibited in Area 543, as described in §679.7(a)(19).

Table 6 to 50 CFR Part 679 Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
Kiska I./Cape St. Stephen	Aleutian Islands	51° 52.50 N	177° 12.70 E	51° 53.50 N	177° 12.00 E	20
Kiska I./Sobaka & Vega	Aleutian Islands	51° 49.50 N	177° 19.00 E	51° 48.50 N	177° 20.50 E	20
Kiska I./Lief Cove	Aleutian Islands	51° 57.16 N	177° 20.41 E	51° 57.24 N	177° 20.53 E	20
Kiska I./Sirius Pt.	Aleutian Islands	52° 08.50 N	177° 36.50 E			20
Tanadak I. (Kiska)	Aleutian Islands	51° 56.80 N	177° 46.80 E			20
Segula I.	Aleutian Islands	51° 59.90 N	178° 05.80 E	52° 03.06 N	178° 08.80 E	20
Ayugadak Point	Aleutian Islands	51° 45.36 N	178° 24.30 E			20
Rat I./Krysi Pt.	Aleutian Islands	51° 49.98 N	178° 12.35 E			20
Little Sitkin I.	Aleutian Islands	51° 59.30 N	178° 29.80 E			20
Amchitka I./Column Rocks	Aleutian Islands	51° 32.32 N	178° 49.28 E			20
Amchitka I./East Cape	Aleutian Islands	51° 22.26 N	179° 27.93 E	51° 22.00 N	179° 27.00 E	20
Amchitka I./Cape Ivakin	Aleutian Islands	51° 24.46 N	179° 24.21 E			20
Semisopochnoi/Petrel Pt.	Aleutian Islands	52° 01.40 N	179° 36.90 E	52° 01.50 N	179° 39.00 E	20
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51° 57.30 N	179° 46.00 E			20
Amatignak I. Nitrof Pt.[7]	Aleutian Islands	51° 13.00 N	179° 07.80 W			20,10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
Unalga & Dinkum Rocks[7]	Aleutian Islands	51° 33.67 N	179° 04.25 W	51° 35.09 N	179° 03.66 W	20,10
Ulak I./Hasgox Pt.[7]	Aleutian Islands	51° 18.90 N	178° 58.90 W	51° 18.70 N	178° 59.60 W	20,10
Kavalga I.[7]	Aleutian Islands	51° 34.50 N	178° 51.73 W	51° 34.50 N	178° 49.50 W	20,10
Tag I.[7]	Aleutian Islands	51° 33.50 N	178° 34.50 W			20,10
Ugidak I.[6]	Aleutian Islands	51° 34.95 N	178°30.45 W			10, 20
Gramp Rock[6]	Aleutian Islands	51° 28.87 N	178° 20.58 W			10, 20
Tanaga I./Bumpy Pt.[4]	Aleutian Islands	51° 55.00 N	177° 58.50 W	51° 55.00 N	177° 57.10 W	10, 20
Bobrof I.	Aleutian Islands	51° 54.00 N	177° 27.00 W			20
Kanaga I./Ship Rock	Aleutian Islands	51° 46.70 N	177° 20.72 W			20
Kanaga I./North Cape	Aleutian Islands	51° 56.50 N	177° 09.00 W			20
Adak I.	Aleutian Islands	51° 35.50 N	176° 57.10 W	51° 37.40 N	176° 59.60 W	20
Little Tanaga Strait	Aleutian Islands	51° 49.09 N	176° 13.90 W			20
Great Sitkin I.	Aleutian Islands	52° 06.00 N	176° 10.50 W	52° 06.60 N	176° 07.00 W	20
Anagaksik I.	Aleutian Islands	51° 50.86 N	175° 53.00 W			20
Kasatochi I.	Aleutian Islands	52° 11.11 N	175° 31.00 W			20
Atka I./North Cape	Aleutian Islands	52°24.20 N	174° 17.80 W			20
Amlia I./Sviech. Harbor[5]	Aleutian Islands	52° 01.80 N	173° 23.90 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
Sagigik I.[5]	Aleutian Islands	52° 00.50 N	173° 09.30 W			20
Amlia I./East[5]	Aleutian Islands	52° 05.70 N	172° 59.00 W	52° 05.75 N	172° 57.50 W	20
Tanadak I. (Amlia)[5]	Aleutian Islands	52° 04.20 N	172° 57.60 W			20
Agligadak I.[5]	Aleutian Islands	52° 06.09 N	172° 54.23 W			20
Seguam I./Saddleridge Pt.[5]	Aleutian Islands	52° 21.05 N	172° 34.40 W	52° 21.02 N	172° 33.60 W	20
Seguam I./Finch Pt.[5]	Aleutian Islands	52° 23.40 N	172° 27.70 W	52° 23.25 N	172° 24.30 W	20
Seguam I./South Side[5]	Aleutian Islands	52° 21.60 N	172° 19.30 W	52° 15.55 N	172° 31.22 W	20
Amukta I. & Rocks	Aleutian Islands	52° 27.25 N	171° 17.90 W			20
Chagulak I.	Aleutian Islands	52° 34.00 N	171° 10.50 W			20
Yunaska I.	Aleutian Islands	52° 41.40 N	170° 36.35 W			20

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates.

[2] Closures as stated in 50 CFR 679.22(a)(7)(vi).

[3] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site.

[4]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located:

a) 0 nm to 20 nm seaward of Tanaga I./Bumpy Pt and east of 178° W long., and

b) 0 nm to10 nm seaward of Tanaga I./Bumpy Pt and west of 178° W long.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA), which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173° 30' W long. and 172° 30' W long.

[6] Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located:

a) 0 nm to 20 nm seaward of these sites and east of 178° W long., and

b) 0 nm to 10 nm seaward of these sites and west of 178° W long.

[7]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located:

a) 0 nm to 20 nm seaward of these sites and west of 179°0'0" W longitude, and

b) 0 nm to 10 nm seaward of these sites and east of 179°0'0" W longitude

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Table 12 to 50 CFR Part 679 Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Walrus I. (Pribilofs)	Bering Sea	57° 11.00 N	169° 56.00 W			N
Attu I./Cape Wrangell	Aleutian I.	52° 54.60 N	172° 27.90 E	52° 55.40 N	172° 27.20 E	Y
Agattu I./Gillon Pt.	Aleutian I.	52° 24.13 N	173° 21.31 E			Y
Agattu I./Cape Sabak	Aleutian I.	52° 22.50 N	173° 43.30 E	52° 21.80 N	173° 41.40 E	Y
Buldir I.	Aleutian I.	52° 20.25 N	175° 54.03 E	52° 20.38 N	175° 53.85 E	Y
Kiska I./Cape St. Stephen	Aleutian I.	51° 52.50 N	177° 12.70 E	51° 53.50 N	177° 12.00 E	Y
Kiska I./Lief Cove	Aleutian I.	51° 57.16 N	177° 20.41 E	51° 57.24 N	177° 20.53 E	Y
Ayugadak Point	Aleutian I.	51° 45.36 N	178° 24.30 E			Y
Amchitka I./Column Rocks	Aleutian I.	51° 32.32 N	178° 49.28 E			Y
Amchitka I./East Cape	Aleutian I.	51° 22.26 N	179° 27.93 E	51° 22.00 N	179° 27.00 E	Y
Semisopochnoi/Petrel Pt.	Aleutian I.	52° 01.40 N	179° 36.90 E	52° 01.50 N	179° 39.00 E	Y
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51° 57.30 N	179° 46.00 E			Y
Ulak I./Hasgox Pt.	Aleutian I.	51° 18.90 N	178° 58.90 W	51° 18.70 N	178° 59.60 W	Y
Tag I.	Aleutian I.	51° 33.50 N	178° 34.50 W			Y
Gramp Rock	Aleutian I.	51° 28.87 N	178° 20.58 W			Y
Kanaga I./Ship Rock	Aleutian I.	51° 46.70 N	177° 20.72 W			N

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Adak I.	Aleutian I.	51° 35.50 N	176° 57.10 W	51° 37.40 N	176° 59.60 W	Y
Kasatochi I.	Aleutian I.	52° 11.11 N	175° 31.00 W			Y
Agligadak I.	Aleutian I.	52° 06.09 N	172° 54.23 W			Y
Seguam I./Saddleridge Pt.	Aleutian I.	52° 21.05 N	172° 34.40 W	52° 21.02 N	172° 33.60 W	Y
Yunaska I.	Aleutian I.	52° 41.40 N	170° 36.35 W			Y
Adugak I.	Bering Sea	52° 54.70 N	169° 10.50 W			Y
Ogchul I.	Gulf of Alaska	52° 59.71 N	168° 24.24 W			Y
Bogoslof I./Fire I.	Bering Sea	53° 55.69 N	168° 02.05 W			Y
Akutan I./Cape Morgan	Gulf of Alaska	54° 03.39 N	165° 59.65 W	54° 03.70 N	166° 03.68 W	Y
Akun I./Billings Head	Bering Sea	54° 17.62 N	165° 32.06 W	54° 17.57 N	165° 31.71 W	Y
Ugamak I.	Gulf of Alaska	54° 13.50 N	164° 47.50 W	54° 12.80 N	164° 47.50 W	Y
Sea Lion Rock (Amak)	Bering Sea	55° 27.82 N	163° 12.10 W			Y
Clubbing Rocks (S)	Gulf of Alaska	54° 41.98 N	162° 26.74 W			Y
Clubbing Rocks (N)	Gulf of Alaska	54° 42.75 N	162° 26.72 W			Y
Pinnacle Rock	Gulf of Alaska	54° 46.06 N	161° 45.85 W			Y
Chernabura I.	Gulf of Alaska	54° 45.18 N	159° 32.99 W	54° 45.87 N	159° 35.74 W	Y
Atkins I.	Gulf of Alaska	55° 03.20 N	159° 17.40 W			Y
Chowiet I.	Gulf of Alaska	56° 00.54 N	156° 41.42 W	56° 00.30 N	156° 41.60 W	Y

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Chirikof I.	Gulf of Alaska	55° 46.50 N	155° 39.50 W	55° 46.44 N	155° 43.46 W	Y
Sugarloaf I.	Gulf of Alaska	58° 53.25 N	152° 02.40 W			Y
Marmot I.	Gulf of Alaska	58° 13.65 N	151° 47.75 W	58° 09.90 N	151° 52.06 W	Y
Outer (Pye) I.	Gulf of Alaska	59° 20.50 N	150° 23.00 W	59° 21.00 N	150° 24.50 W	Y
Wooded I. (Fish I.)	Gulf of Alaska	59° 52.90 N	147° 20.65 W			N
Seal Rocks (Cordova)	Gulf of Alaska	60° 09.78 N	146° 50.30 W			N

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

Note: No groundfish fishing zones are the waters between 0 nm to 3 nm surrounding each site.

N=No, Y=Yes.

[FR Doc. 2010–32654 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 75, No. 249
Wednesday, December 29, 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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0036]

RIN 0579–AD27

Importation of Clementines From Spain; Amendment to Inspection Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of clementines from Spain by removing from the regulations the number of clementines per consignment intended for export to the United States that are required to be sampled by inspectors of the Animal and Plant Health Inspection Service (APHIS). In place of this number, we propose to state in the regulations that the number to be sampled will be determined by APHIS. By removing from the regulations the number of clementines per consignment from Spain to be sampled, APHIS would have the flexibility to respond to changing risk levels while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before February 28, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0036* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0036.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. William Wesela, Assistant Director of Preclearance Programs, Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5718.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

The regulations in § 319.56–34 list specific requirements for the importation into the United States of clementines from Spain. Clementines may only be imported if the Government of Spain or its designated representative enters into a trust fund agreement with the Animal and Plant Health Inspection Service (APHIS) before each shipping season. To minimize the risk of plant pests being introduced into the United States, the regulations also require that growers who produce clementines in Spain for export to the United States be registered with the Government of Spain, and that they agree to follow the requirements of the Mediterranean fruit fly (*Ceratitis capitata,* or Medfly) management program administered by the Government of Spain.

Clementines from Spain must be accompanied by a phytosanitary certificate stating that the fruit meets the conditions of the Medfly management program and the regulations. Clementines from Spain must also be cut and inspected (*i.e.,* sampled) before undergoing cold treatment in accordance with the regulations, and be sampled at the port of entry.

Specifically, with respect to pre-treatment sampling, paragraph (f) of § 319.56–34 states that APHIS inspectors will cut and inspect 200 fruit randomly selected from throughout each consignment prior to cold treatment. The purpose of this inspection is to look for live Medflies in any stage of development that may be present. If a single Medfly is found, the entire consignment of clementines is rejected. If a single Medfly is found in any two lots from the same orchard during the same shipping season, that orchard is removed from the export program for the remainder of the shipping season.

A cutting and inspection level of 200 fruit per consignment has generally provided APHIS inspectors with the ability to detect for Medfly if they are present at even low levels of infestation. However, in the past year, inspectors from the Department of Homeland Security's Bureau of Customs and Border Protection have repeatedly discovered high levels of dead larvae in clementine consignments arriving in the United States from Spain. Under the current regulations, APHIS inspectors are unable to adjust the number of fruit sampled prior to cold treatment without an agreement from the national plant protection organization of Spain to sample at a rate higher than we have specified in the regulations. However, when conditions indicate a higher risk of Medfly, our experience indicates that adjusting the sampling rate would detect pests that might otherwise go undetected prior to treatment.

We propose to remove the requirement in paragraph (f) of § 319.56–34 that exactly 200 fruit be sampled before treatment and instead state that the number of fruit to be sampled will be determined by APHIS. The actual sampling level would be included in the bilateral workplan agreed to by APHIS and the Government of Spain, which describes in detail how the regulations are implemented operationally. This change would give

APHIS the flexibility to adjust the sample without going through the rulemaking process, and would be more in line with agreements that we have with other countries exporting fruit to the United States. APHIS would be able to increase the number of fruit sampled if the risk of Medfly larvae in consignments of fruit is determined to have increased, and lower the number if environmental, climatic, or other factors indicate a lower risk.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov).

A consignment of clementines consists of one or more lots containing no more than a combined total of 200,000 boxes of clementines that are presented to an inspector for pre-treatment inspection. Under the current regulations that allow for sampling of 200 clementines, the percentage of sampled clementines ranges from 0.02 percent to 0.1 percent per consignment inspected. Even if inspection amounts were increased two or three times when there is a higher pest risk (or reduced when there is a lower pest risk), the percentage of clementines sampled would remain negligible.

While this rule would help reduce the risk of pest introduction, we are unable to quantify the economic impact of decreasing the probability of introducing Medfly into the United States. Medfly introductions can be very costly to producers and to the Federal and State Governments. The mean cost of eradicating six Medfly outbreaks in 2007 was $13.54 million.

This rule would not have a significant economic effect on producers of clementines or other U.S. entities, regardless of their size or resources. As described, an increase or decrease in the number of fruit sampled due to pest risk level changes would have a negligible effect on the number of clementines imported from Spain.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.56–34, paragraph (f) is amended as follows:

a. In the paragraph heading, by removing the words "; rates of inspection".

b. By removing the words "200 fruit" and adding in their place the words "a sample of clementines determined by APHIS".

Done in Washington, DC on December 22, 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–32770 Filed 12–28–10; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB03

Appliance Labeling Rule

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Proposed rule; request for comment.

SUMMARY: The Commission proposes changing the effective date for its new light bulb labeling requirements (published on July 19, 2010, 75 FR 41696) to January 1, 2012, to provide manufacturers with additional time to incorporate the new label on their packaging. The Commission also proposes not requiring the new label for incandescent bulbs (*e.g.,* 75 watt bulbs) that, as of 2013, will not meet federal energy efficiency standards.

DATES: Written comments must be received on or before January 28, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in section III of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted using the following weblink: *https://ftcpublic.commentworks.com/ftc/lightbulblabel* (and following the instructions on the Web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Independence and Security Act of 2007 (Pub. L. 110–140) (EISA) directed the Commission to consider the effectiveness of its current labeling requirements for "lamps," commonly referred to as light bulbs, and alternative labeling approaches.[1] Pursuant to this mandate, on July 19, 2010 (75 FR 41696), the Commission published amendments to the Appliance Labeling Rule (Rule) creating new labeling requirements for general service lamps (*i.e.,* medium screw base incandescent, compact fluorescent (CFL), and light-emitting diode (LED) products). These requirements become effective on July 19, 2011. The new requirements feature a "Lighting Facts" label that will provide consumers with information on a bulb's brightness, annual energy cost, life, color appearance, and energy use.

[1] This document uses the terms lamp, light bulb, and bulb interchangeably.

II. NEMA Petition and the Commission's Proposed Amendments

On October 27, 2010, the National Electrical Manufacturers Association (NEMA) submitted a Petition asking for changes to the new requirements.[2] NEMA is a trade association for the electrical manufacturing industry. NEMA's lamp manufacturers make and sell a substantial majority of the general service lamps affected by the revised Rule. Specifically, citing burdens that it failed to raise prior to the issuance of the revised Rule, NEMA asks the Commission to make four changes to the labeling requirements: (1) Extend the effective date for new labeling for all covered bulbs, except CFLs, to January 1, 2012; (2) extend the effective date for CFLs until January 1, 2013; (3) exempt all incandescent bulbs that will be phased out by 2014 due to revised federal energy efficiency standards; and (4) make certain changes to the label formatting requirements, particularly for smaller packages.[3]

In response, the Commission proposes to extend the Rule's effective date for all covered bulbs to January 1, 2012, but does not propose extending the effective date further for CFLs. The Commission also proposes exempting incandescent bulbs subject to federal efficiency standards in place by 2013, but not bulbs that will continue to be manufactured until 2014. In addition, the Commission does not propose any changes to the Rule's format requirements. The Commission seeks comment on these proposals.

A. Effective Date Extension For All Covered Bulbs

NEMA's Request: In its Petition, NEMA states that the current effective date of July 19, 2011, which provides manufacturers one year to comply with the revised Rule, is inadequate for several reasons not detailed in its earlier comments.[4] First, NEMA asserts that manufacturers now produce many more models than when the Commission last made comprehensive changes to its labeling requirements in 1994, which provided manufacturers with one year to comply.[5] This substantial increase—from as many as 1,500 packaging styles per full-line bulb manufacturer in 1994 to as many as 3,500 packaging styles today—greatly increases the burden on manufacturers, and, thus, requires more time to implement. Second, the supply chain to U.S. retail shelves is much longer and more complex than in 1994 because a large number of packages impacted by the Rule, including almost all CFLs, are now manufactured and packaged in Asia. NEMA asserts that these extended supply chains make implementation of labeling changes much more logistically challenging. NEMA also states that, as a practical matter, the fact that most bulbs are now imported makes timely compliance with the Rule more difficult because manufacturers must not only package their bulbs with the new label, but do so prior to shipping and importing them into the United States.[6] Third, NEMA contends that the new content requirements are much more extensive than those issued in 1994, and, thus, will require many more packages to be completely redesigned.[7] Fourth, NEMA explains that manufacturers need additional time to work with retail stores to ensure that their revised packages are compatible with existing retail displays.

Responses to NEMA's Request: The Natural Resources Defense Council (NRDC) opposes an extension for all covered products. It asserts that the new label is required "as soon as possible" to help consumers make decisions in an increasingly complex marketplace. NRDC also states that the new "mandatory rules for calculating operating costs and savings claims" will help combat misleading claims that may harm consumer confidence in these new products. However, as discussed further in subsection B, NRDC supports an extension of the effective date for CFLs.

Earthjustice argues against any extension because, in its view, NEMA's Petition provides no new evidence justifying a delay and because the new label is needed to help consumers make informed decisions when purchasing bulbs. Also, Earthjustice notes that manufacturers can meet the current effective date for at least some products, as evidenced by NEMA's Petition, which states that manufacturers are ready to label LED and halogen products with no exceptions or delays.

Commission Response: The Commission proposes to extend the effective date for all covered bulbs to January 1, 2012. The Commission set the present one year compliance period because it was consistent with the compliance period for its 1994 label changes and within the one to two year compliance period requested by NEMA. Indeed, as NEMA concedes, it failed to raise the implementation concerns highlighted in its Petition prior to issuance of the revised Rule. The Petition does, however, detail significant new concerns about the effective date. Specifically, the much larger number of packaging styles involved than in 1994, the difficulties posed by overseas manufacturing and packaging, and the extensive nature of the label changes required for each package weigh in favor of providing manufacturers with additional time to comply.

In consideration of these issues, as well as Earthjustice's opposition to any extension and NRDC's opposition to an extension for non-CFLs, an extension of approximately six months to January 1, 2012, is appropriate. Importantly, this date coincides with the effective date for heightened Federal efficiency standards that will begin to phase out traditional incandescent bulbs in favor of more efficient alternatives. Thus, even with the extension, consumers will have the new label to help them with this transition. Moreover, NEMA's Petition states that bulb manufacturers are prepared to fully comply with the new labeling rules for all LED and new halogen bulbs without exceptions or delays. Therefore, the Commission expects that consumers will have the benefit of the new label on many such bulbs introduced to the market prior to the proposed effective date.

B. Effective Date for CFLs

NEMA's Request: NEMA also seeks a further extension of the effective date for labeling CFLs to January 1, 2013. First, it explains that putting the new label on CFL packages presents unique challenges because these packages often have multiple shapes and unusual configurations, such as extended side panels and blister packs, and because their small size makes it particularly difficult to incorporate the new label. Second, NEMA asserts that the sheer

[2] NEMA's Petition is available on the Commission's Web site at *http://www.ftc.gov/os/2010/10/101027nemapetition.pdf.*

[3] As discussed in detail below, the Commission received letters in response to NEMA's Petition from Earthjustice and the Natural Resources Defense Council (NRDC). Earthjustice's November 15, 2010 letter, submitted on behalf of Public Citizen and the Sierra Club, is available at *http://www.ftc.gov/os/2010/11/101115earthjusticelightlabeling.pdf.* NRDC's letter, which is also signed by representatives of the American Council for Energy Efficient Economy, Appliance Standards Awareness Project, and the Alliance to Save Energy, is available at *http://www.ftc.gov/os/2010/11/101110advocatenema.pdf.*

[4] In its earlier comments, NEMA requested a one to two year period to comply with the new labeling requirements.

[5] 59 FR 25176 (May 13, 1994).

[6] Pursuant to the revised rule, after the effective date, bulbs cannot be manufactured or imported without the new label. Thus, in order to import bulbs made outside the United States by the effective date, they must be manufactured with the new label some time earlier.

[7] The 1994 label requires only lumens, watts, and life disclosures on the package front, while the new label requires information on the front and back package panels, and includes brightness, energy cost, life, light appearance, energy use, and mercury disclosures.

number of CFL packaging styles affected by the new label—as many as 1,800 to 2,000 per manufacturer—creates an undue burden absent an extension. Third, NEMA argues that because no company has the internal resources necessary to change so many packages, manufacturers will have to outsource a substantial portion of the work, presumably at greater cost. Fourth, as discussed above, the long supply chain for CFLs poses logistical challenges for label changes. Finally, NEMA notes manufacturers plan to replace many current CFLs within 12 to 18 months with new models that contain less mercury and have enhanced features (*e.g.,* dimming). Thus, some CFL models would bear the new label for only a short time period.

Responses to NEMA's Request: NRDC supports NEMA's proposal to extend the effective date for CFLs to January 1, 2013. In its view, this extension will allow manufacturers to focus on labeling new energy saving bulbs, as well as their remaining incandescent bulbs. Earthjustice, however, opposes any extension. It argues that the large number of CFLs in the market underscores the need for the new label, particularly given the Commission's conclusion that the current label, with its focus on wattage, is not effective for communicating the brightness of high efficiency bulbs.

Commission Response: The Commission does not propose further extending the effective date for CFLs to January 1, 2013. As NEMA explains, CFLs are the predominant high efficiency bulb on the market and will remain so for some time. The proposed delay would deprive consumers of the benefits of the new label for these bulbs, including preventing them from using the new label to readily compare CFLs to halogens and LEDs as those technologies become more available. Moreover, further delaying the new label for the most prevalent high efficiency bulbs on the market would hamper the Commission and the Department of Energy's (DOE's) efforts to educate consumers about the new label and high efficiency bulbs. In addition, the proposed extension of the effective date for all covered bulbs to January 1, 2012, along with the exemption of certain incandescent bulbs as discussed below in Section C, should help alleviate the burdens associated with labeling CFLs. Finally, the proposal would not require the new label for CFLs that will be discontinued before January 1, 2012, because manufacturers will cease production of those CFLs before the new label becomes effective.

C. Incandescent Bulbs Subject to New Federal Efficiency Standards

NEMA's Request: NEMA also urges the Commission to exempt from the new label incandescent bulbs that will not meet heightened federal efficiency standards. Specifically, NEMA seeks to exempt 75-watt incandescent bulbs that will be eliminated by new EISA efficiency standards effective January 1, 2013, as well as 60 and 40-watt incandescent bulbs that will not meet EISA standards effective January 1, 2014.[8] In addition, NEMA seeks to exempt certain inefficient incandescent reflector products that DOE efficiency regulations will eliminate on July 14, 2012.[9] According to NEMA, together, these incandescent bulbs comprise 25% of the bulbs covered by the new labeling rule.

NEMA explains that manufacturers are no longer investing in these bulbs given their impending obsolescence.[10] As a result, NEMA opposes requiring manufacturers to reinvest in them by creating new packaging when they will be manufactured for no more than 17 months (for 75-watt incandescents) and 29 months (for 60 and 40-watt incandescents), thereby wasting industry resources better directed to more efficient lighting technologies. In addition, NEMA asserts that EISA's labeling provisions focus on new, high efficiency products and were not intended to require label changes for soon-to-be-obsolete bulbs. NEMA further states that bulb manufacturers simply do not have the resources to change these product packages before the deadline given the many challenges they face to label CFL and other high efficiency bulbs. Finally, NEMA argues that any harm caused by not labeling these incandescent bulbs is minimal because their packages would continue to display the FTC's current label, which provides lumens, watts, and life disclosures. The current FTC label will enable consumers to compare products for the short period these bulbs remain on store shelves.

Responses to NEMA's Request: NRDC disagrees. In its view, the new label—particularly its energy cost disclosure—is essential for incandescent bulbs to show consumers that they have much higher operating costs than more efficient alternatives. Because approximately 50% of these incandescents will continue to be manufactured until January 1, 2014, NRDC argues labeling them will help consumers achieve substantial energy savings. However, as a compromise, NRDC recommends that the Commission only require manufacturers to include the front label (lumens and energy cost) on incandescent packages, exempting these bulbs from the Lighting Facts label. In NRDC's view, this approach would give consumers energy cost information, while only requiring manufacturers to make "minor" package modifications.

Earthjustice also disagrees with NEMA's proposal, noting that the FTC has already concluded that the new label is important for incandescents because these bulbs will remain on the market more than a year after the current Rule's effective date and because they are particularly inefficient. Moreover, Earthjustice opposes NRDC's suggestion to require the front label only for these bulbs because it would deprive consumers of important information on the Lighting Facts label that will help them compare incandescents to higher efficiency bulbs.

Commission Response: Based on this record, the Commission proposes to exempt both incandescent bulbs that do not meet the 2013 EISA efficiency standards (*i.e.,* 75 watt bulbs) and reflector bulbs that do not meet DOE's July 14, 2012, standards from the new labeling requirements.[11] The Commission would continue to require the existing label (lumens, watts, and life) for these products. However, the Commission does not propose to exempt products that do not meet the 2014 standards (*i.e.,* 60 and 40 watt bulbs) from the new label.

When it revised the Rule, the Commission determined the new label was appropriate for traditional incandescent bulbs that would remain in production for more than a year after the Rule's effective date. The Commission included these bulbs because Congress had identified them as inefficient and the new labeling requirements would provide benefits to consumers that outweighed additional costs to industry. At the same time, the Commission exempted 100-watt incandescent bulbs because new efficiency standards will halt production of those bulbs by January 1, 2012, less than six months after the effective date. The Commission reasoned that the benefits of labeling these bulbs for such a short period did not justify the costs to manufacturers. Having considered NEMA's newly raised concerns, the Commission now proposes to exempt 75 watt

[8] *See* 42 U.S.C. 6295(I).

[9] 74 FR 34080 (July 14, 2009).

[10] NEMA notes that efficiency requirements in the European Union, Canada, and Mexico also have hastened disinvestment in these bulbs.

[11] 10 CFR 430.32(n)(5).

incandescent bulbs and incandescent reflector bulbs. The proposed January 1, 2012 effective date would shorten to a year the time 75 watt incandescents can be manufactured after the new labeling requirements become effective. This shorter period shifts the cost benefit analysis in favor of exempting these bulbs. Moreover, exempting 75 watt incandescent bulbs should free resources to label other bulbs, such as CFLs, in a timely manner.

The case for requiring the new label on 60 and 40 watt bulbs is more compelling. These bulbs, which according to NRDC account for more than 50% of the incandescent market, will continue to be manufactured for two years after the proposed effective date. Because consumers will see 60 and 40 watt bulbs on store shelves for a much longer time and in greater numbers than 75 watt bulbs, an increased need exists for the new label to help consumers compare alternatives.[12]

Finally, the Commission declines to propose that only the front label (lumens and energy cost) be required for incandescent bulbs as suggested by NRDC. First, the front label no longer provides wattage information. This information helps consumers ensure that they do not exceed the wattage limitation for their fixtures. Second, the front label does not provide consumers the utility rate and daily usage assumptions (*i.e.,* 11 cents per kWh and three hours per day) underlying the energy cost disclosure, rendering the energy cost disclosure less useful. Third, it is unclear whether this approach actually decreases manufacturer's labeling costs because they still would have to change each incandescent package. Finally, as noted by Earthjustice, the Lighting Facts label contains other information such as light appearance that will help consumers compare incandescent bulbs to higher efficiency alternatives.

D. Formatting Requirements for Smaller Packages

NEMA's Request: NEMA's Petition seeks certain changes and clarifications concerning the Rule's formatting requirements for small packages. In particular, NEMA suggests the Commission allow the linear (small, text-only) format on packages up to 48 square inches instead of the 24 square inches specified in the Rule.[13] NEMA also asks the Commission to allow smaller label dimensions, smaller font sizes, and the placement of language on more than one line *(e.g.,* presumably the placement of "brightness" and "lumens" on separate lines).[14] Finally, NEMA seeks clarification on whether manufacturers should include the bulb area on blister packs, space devoted to warnings, and space occupied by graphics in calculating whether a package is less than 24 square inches.

Commission Response: The Commission does not propose to change the Rule's formatting requirements as requested by NEMA. Specifically, the standard label should fit on packages larger than 24 inches because the criteria used to set this threshold are consistent with those used by the Food and Drug Administration in its well-established food labeling program.[15] A larger threshold would encourage use of the smaller, less helpful, linear label. Additionally, while the Rule does not dictate the label's dimensions, it does specify minimum font, leading, and line thicknesses.[16] The Commission is not proposing any changes to the required font sizes because smaller sizes likely would decrease the label's effectiveness. Manufacturers should note that they may contact FTC staff for guidance if they have specific problems fitting the required label on particular packages. Finally, in calculating the surface area available for labeling on their packages, manufacturers should not include blister pack surfaces covering the bulb. However, they should include space used for any non-FTC mandated warnings, graphics, or other printed information.

III. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue specific amendments.

Interested parties are invited to submit written comments electronically or in paper form. All comments should be filed as prescribed below, and must be received on or before January 28, 2011. Comments should state "Lamp Labeling—Effective Date Extension, P–114200" in the text and, if applicable, on the envelope. The FTC will place your comment—including your name and your state—on the public record of this proceeding, and to the extent practicable, will make it available to the public on the FTC Web site at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission endeavors to remove individuals' home contact information from the comments before placing them on its Web site. Because comments will be made public, they should not include: (1) Any sensitive personal information, such as any individual's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number; (2) any sensitive health information, such as medical records or other individually identifiable health information; or (3) any trade secret or any commercial or financial information which is privileged or confidential, as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[17]

Because postal mail addressed to the FTC is subject to delay due to heightened security screening, if possible, please submit your comments in electronic form or send them by courier or overnight service. To ensure that the Commission considers an electronic comment, you must file it at *https://ftcpublic.commentworks.com/ftc/lightbulblabel* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/search/Regs/home.html#home*, you may also file a comment through that Web site. The Commission will consider all comments that *regulations.gov* forwards to it. You

[12] Although NEMA argues that Congress did not intend to change the labeling of traditional incandescent bulbs, nothing in EISA exempts these bulbs from the FTC's mandate to consider alternative labeling approaches to assist consumers.

[13] The amendments announced in the July 19, 2010 Notice allow manufacturers to use a smaller, linear, text-only Lightings Facts label, if: (1) The package's total surface area available for labeling is less than 24 square inches; and (2) the package shape or size cannot accommodate any of three standard formats (in English) on the rear or side panel. *See* 16 CFR 305.15(b)(5). This linear label criteria is similar to the FDA requirements for its Nutrition Facts programs. 75 FR at 41700.

[14] Earthjustice and NRDC's letters do not address NEMA's recommendations on this issue.

[15] *See* 75 FR at 41700, n. 31.

[16] *See Id.,* n. 29.

[17] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The FTC's General Counsel will grant or deny the request consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

may also visit the FTC Web site at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the reference "Lamp Labeling—Effective Date Extension, P–114200" in the text of the comment and, if applicable, on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive comments it receives. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.shtm.*

Under the Freedom of Information Act (FOIA) or other laws, we may be required to disclose to outside organizations the information you provide. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at *http://www.ftc.gov/ftc/privacy.shtm.* The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before January 18, 2011, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

IV. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act (PRA).[18] OMB has approved the Rule's existing information collection requirements through May 31, 2011 (OMB Control No. 3084–0069). The proposed amendments in this document will not increase and, in fact, will likely somewhat reduce previously estimated burden for the lamp labeling amendments.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the economic impact of the proposed amendments will be significant. In fact, the changes under consideration are likely to decrease the Rule's burden on affected entities.

In its July 19, 2010 Notice (75 FR at 41711), the Commission estimated that the new labeling requirements will apply to about 50 product manufacturers and an additional 150 online and paper catalog sellers of covered products. The Commission expects that approximately 150 qualify as small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are "small entities," and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

Section 321(b) of the Energy Independence and Security Act of 2007 (Pub. L. 110–140) requires the Commission to conduct a rulemaking to consider the effectiveness of the lamp labeling and to consider alternative labeling approaches. The Commission is considering an extension to the rule's effective date to provide industry members with additional compliance time.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the rule is to improve the effectiveness of the current lamp labeling program. EISA directs the Commission to consider whether alternative labeling approaches would help consumers better understand new high-efficiency lamp products and help them choose lamps that meet their needs. The particular changes currently under consideration would extend the rule's effective date to provide additional time for compliance.

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, lamp manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Lamp catalog sellers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the proposed rule's requirements qualify as small businesses.[19] The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed rule would have a significant economic impact.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The changes under consideration would not increase any reporting, recordkeeping, or other compliance requirements associated with the Commission's labeling rules (75 FR 41696). The proposed amendments will only extend the effective date for complying with the new light bulb labeling requirements previously issued at 75 FR 41696. The proposed rule

[18] 44 U.S.C. 3501–3521.

[19] *See* 75 FR at 41712.

amendments would also exempt incandescent bulbs that fail to meet federal energy efficiency standards by 2013 (*e.g.,* 75 watt bulbs) from those requirements. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. For example, in proposing to extend the effective date for the new labeling requirements and to exempt certain bulbs from those requirements, the Commission is currently unaware of the need to adopt any special provision for small entities to be able to take advantage of the proposed extension or exemption, where applicable. The Commission, as previously explained, expects that the proposed amendments will postpone or reduce, rather than increase, the economic impact of the rule's requirements for all entities, including small entities. Nonetheless, if the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VII. Final Rule

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission proposes to change the effective date of FR Doc 2010–16895 published on July 19, 2010 (75 FR 41696) to January 1, 2012 and to further amend part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

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

Authority: 42 U.S.C. 6294.

2. In § 305.15, paragraph (c)(1) is revised to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(c)(1) Any covered incandescent lamp that is subject to and does not comply with the January 1, 2012 or January 1, 2013 efficiency standards specified in 42 U.S.C. 6295 or the DOE standards at 10 CFR 430.32(n)(5) effective July 14, 2012 shall be labeled clearly and conspicuously on the principal display panel of product package with the following information in lieu of the labeling requirements specified in paragraph (b):

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–32577 Filed 12–28–10; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2010–0006; Notice No. 113; Re: Notice No.109]

RIN 1513–AB24

Use of Various Winemaking Terms on Wine Labels and in Advertisements; Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to a request made on behalf of a wine industry association, TTB is extending for an additional 60 days the comment period prescribed in Notice No. 109, Use of Various Winemaking Terms on Wine Labels and in Advertisements; Request for Public Comment, an advance notice of proposed rulemaking published in the **Federal Register** on November 3, 2010.

DATES: Written comments on Notice No. 109 are now due on or before March 4, 2011.

ADDRESSES: You may send comments on Notice No. 109 to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for Notice No. 109 as posted within Docket No. TTB–2010–0006 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of Notice No. 109 for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, Notice No. 109, and any comments TTB receives regarding Notice No. 109 within Docket No. TTB–2010–0006 at *http://www.regulations.gov.* A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 109. You also may view copies of all notices and comments associated with Notice No. 109 by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333–7050.

SUPPLEMENTARY INFORMATION: In Notice No. 109 published in the **Federal Register** (75 FR 67669) on Wednesday, November 3, 2010, the Alcohol and Tobacco Tax and Trade Bureau announced that it is considering amending the regulations concerning various winemaking terms commonly used on labels and in advertisements to provide consumers with information

about the growing or bottling conditions of wine. In that notice, TTB invited comments from industry members, consumers, and other interested parties as to whether and to what extent it should propose specific regulatory amendments for further public comment. TTB requested such comments on or before January 3, 2011.

TTB received a letter dated December 14, 2010, from attorney Richard Mendelson on behalf of the Napa Valley Vintners (NVV), a trade association representing nearly 400 wineries Napa Valley, California. The letter noted that NVV has formed a sub-committee to research and poll the NVV's members regarding the issues raised in Notice No. 109. The letter stated that the sub-committee's work would ultimately be reviewed by the NVV's Board of Directors, which only meets once a month. The letter therefore requested a 90-day extension of the comment period for Notice No. 109 in order to allow time for NVV to fully consider its response to the notice.

In response to this request, TTB extends the comment period for Notice No. 109 an additional 60 days, which TTB believes provides adequate time to comment on the issues raised in Notice No. 109. Therefore, comments on Notice No. 109 are now due on or before March 4, 2011.

Drafting Information

Michael D. Hoover of the Regulations and Rulings Division drafted this notice.

Signed: December 22, 2010.

Cheri D. Mitchell,

Acting Administrator.

[FR Doc. 2010–32874 Filed 12–28–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4, 5, and 7

[Docket No. TTB–2010–0008; Notice No. 114; Re: Notice No. 111]

RIN 1513–AB79

Disclosure of Cochineal Extract and Carmine in the Labeling of Wines, Distilled Spirits, and Malt Beverages; Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to a request from a national trade association, TTB is extending for an additional 60 days the comment period prescribed in Notice No. 111, Disclosure of Cochineal Extract and Carmine in the Labeling of Wines, Distilled Spirits, and Malt Beverages, a notice of proposed rulemaking published in the **Federal Register** on November 3, 2010.

DATES: Written comments on Notice No. 111 are now due on or before March 4, 2011.

ADDRESSES: You may send comments on Notice No. 111 to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for Notice No. 111 as posted within Docket No. TTB–2010–0008 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of Notice No. 111 for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, Notice No. 111, and any comments TTB receives in response to Notice No. 111 within Docket No. TTB–2010–0008 at *http://www.regulations.gov.* A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 111. You also may view copies of this notice, Notice No. 111, and any comments TTB receives in response to Notice No. 111 by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333–7050.

SUPPLEMENTARY INFORMATION:

In Notice No. 111 published in the **Federal Register** (75 FR 67669) on Wednesday, November 3, 2010, TTB proposed to revise its regulations to require the disclosure of the presence of cochineal extract and carmine on the labels of any alcohol beverage product containing one or both of these color additives. This proposed rule responded to a recent final rule issued by the Food and Drug Administration as well as reports of severe allergic reaction, including anaphylaxis, to cochineal extract and carmine-containing foods. This proposal would allow consumers who are allergic to cochineal extract or carmine to identify and thus avoid alcohol beverage products that contain these color additives. TTB requested comments on the proposal on or before January 3, 2011.

TTB received a letter dated December 17, 2010, from attorney Lynne J. Omlie on behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association that represents producers and marketers of distilled spirits and importers of wines sold in the United States. The letter explained that because DISCUS is in the process of collecting information from domestic and foreign companies, regarding alcohol beverage products that may be impacted by the Notice No. 111 proposal, the organization would be unable to meet the original January 3, 2011, comment deadline prescribed in Notice No. 111. The letter therefore requested a 60-day extension of the comment period for Notice No. 111 to allow DISCUS the necessary time to collect and review this data and provide a comment that addresses the issues raised in the proposal.

In response to this request TTB extends the comment period for Notice No. 111 an additional 60 days. Therefore, the comments on Notice No. 111 are now due on or before March 4, 2011.

Drafting Information

Kate M. Bresnahan of the Regulations and Rulings Division drafted this notice.

Signed: December 22, 2010.

Cheri D. Mitchell,

Administrator.

[FR Doc. 2010–32877 Filed 12–28–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 250

[Docket ID: BOEM–2010–0042]

Flaring Versus Venting To Reduce Greenhouse Gas Emissions in the Outer Continental Shelf; Public Workshop

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Public workshop.

SUMMARY: Bureau of Ocean Energy Management, Regulation and Enforcement is announcing a workshop to discuss possible new requirements on flaring versus venting of natural gas in the Outer Continental Shelf (OCS), when such atmospheric release of natural gas is necessary and in compliance with regulations. The main focus of this workshop will be aimed at the potential reduction of Greenhouse Gas (GHG) emissions.

DATES: The workshop will be held on Wednesday, March 30, 2011, from 9 a.m. to 12 p.m.

ADDRESSES: The workshop will be held at 1201 Elmwood Park Blvd., New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Vaughn at (504) 736–2675 or *robin.vaughn@boemre.gov.*

SUPPLEMENTARY INFORMATION:

Subpart K Rulemaking

On March 6, 2007, the U.S. Department of the Interior (Department) published a Notice of Proposed Rulemaking (NPR) in the **Federal Register** (72 FR 9884). This NPR requested comments on proposed revisions to 30 CFR part 250, subpart K, Oil and Gas Production Requirements. The Department conducted analyses to assess the costs and benefits of requiring flare/vent meters and of requiring flaring instead of venting.

- The first analysis supported the recommendation to require meters, provided that the facilities process more than 2,000 barrels of oil per day (BOPD). This requirement was included in the final rule, published on April 19, 2010, in the **Federal Register** (75 FR 20271), Oil and Gas Production Requirements, at 30 CFR part 250, subpart K.
- The second analysis indicated that a regulatory change to require flaring instead of venting may be appropriate. However, the cost of implementing this requirement could be significant, and input from potentially affected parties is necessary. We requested comments on this issue in the proposed rule.
- Commenters pointed out that converting existing facilities that are equipped to vent natural gas to be able to flare natural gas may require significant redesign for safety.
- They also pointed out that there are many factors in determining whether to flare natural gas or vent natural gas when designing a facility. These factors include the operating philosophy, nature and type of reservoir, facility design limitations or capabilities, operating practices, safety, and economics.
- Industry comments also recommended that, in addition to considering requiring flaring instead of venting, BOEMRE should work with them to find ways to reduce overall natural gas emissions.
- Industry representatives also stated that a requirement for flaring instead of venting should be only for new facilities.

Request for a Workshop

Commenters requested that BOEMRE hold a workshop to discuss the issue. BOEMRE plans to work directly with interested parties to study the costs and benefits (especially GHG benefits) of requiring that companies flare the natural gas, whenever possible, when flaring or venting is necessary.

Therefore, we are holding a workshop to discuss the issue of flaring instead of venting. This workshop and additional cost-benefit analysis will consider GHG issues associated with flaring and venting. The workshop will assist BOEMRE to determine how to best implement a General Accounting Office (GAO) recommendation (see GAO Report below).

Proposed Rulemaking

BOEMRE will decide how to move forward with rulemaking on flaring natural gas after we hold the workshop. Our next step would likely be a proposed rule.

GAO Report

In July 2004, the GAO issued a report on world-wide emissions from vented and flared natural gas titled, *Natural Gas Flaring and Venting—Opportunities to Improve Data and Reduce Emissions* (GAO–04–809). This report is available on the GAO Web site at: *http://www.gao.gov/new.items/d04809.pdf.* This report reviewed the flaring and venting data available, the extent of flaring and venting, their contributions to GHG emissions, and opportunities for the Federal Government to reduce flaring and venting.

The report concluded that more accurate records were needed on flaring and venting to determine the amount of the resource that is lost and the volume of GHG emissions these practices contribute to the atmosphere each year. The report also stated that the impact of methane (a naturally occurring gas released during venting) on the earth's atmosphere is about 23 times greater than that of carbon dioxide (a byproduct of flaring). The GAO made two recommendations to the Secretary of the Interior: (1) consider the cost and benefit of requiring that companies flare the natural gas, whenever possible, when flaring or venting is necessary; and (2) consider the cost and benefit of requiring that companies use flaring and venting meters to improve oversight. In addition, there was a recommendation to the Secretary of Energy to consider consulting with the Environmental Protection Agency (EPA), BOEMRE, and Bureau of Land Management, on how to best collect separate statistics on flaring and venting. In 2005, BOEMRE performed a cost-benefit analysis on the possible requirement to flare instead of vent. The agency determined that it was not appropriate to mandate flaring at that time, but noted that this topic would be pursued further. In light of developments since 2005, BOEMRE has determined that a workshop to hear public concerns is appropriate and a new cost-benefit analysis is needed. Note also that the other two GAO recommendations (to consider a requirement to install flare/vent meters and to consider a requirement to report flare volumes separately from vent volumes) were implemented via the April 19, 2010, publication of regulations at 30 CFR Part 250, subpart K (75 FR 20271).

Oil and Gas Industry Contributions to GHG Emissions in the Federal OCS

Most natural gas production involves extracting natural gas from wells drilled into underground gas reservoirs; however, some natural gas is generated as a by-product of oil production. During oil and natural gas production, it may become necessary to burn or release natural gas for a number of operational reasons, including safety. These operations may be associated with unloading or cleaning of a well, production testing, or relieving system pressure during equipment failure. The controlled burning of natural gas is called flaring, while the controlled release of unburned gases directly into the atmosphere is called venting. Most flaring and venting occurs at the end of

a flare stack or boom which ensures that natural gas can be safely disposed of in emergency and shutdown situations. It is virtually impossible to produce oil and natural gas without any flaring or venting, and it would be impractical to shut in production every time an upset occurs. It is estimated that operators in the Gulf of Mexico OCS flare and vent less than 0.5 percent of the gas produced, making this area a world leader in the conservation of natural gas resources.

BOEMRE regulates air emissions as mandated by the OCS Lands Act. Under the 1990 Clean Air Act Amendments, BOEMRE has jurisdiction over Gulf of Mexico OCS emission sources westward of 87°30′ W longitude, and the EPA has jurisdiction over those eastward of 87°30′ W longitude. The EPA also has jurisdiction over emissions in the OCS of Alaska, the Atlantic, and the Pacific. BOEMRE regulates OCS emissions to assure compliance with the National Ambient Air Quality Standards and to prevent significant air quality deterioration in onshore areas. BOEMRE regulates activities that have the potential to affect air quality at the onshore areas.

Both flaring and venting on the OCS are highly regulated by BOEMRE. Federal regulations at 30 CFR 250, subpart K specify the limited circumstances under which offshore oil and gas operators may flare or vent natural gas. In the Federal OCS, BOEMRE requires operators to continuously record these volumes and report them each month. These regulations strictly limit the amount of time operators may flare or vent. In some cases, operators request additional time in order to complete equipment repairs. BOEMRE evaluates each of these requests on a case-by-case basis, primarily focusing on environmental, safety, and conservation aspects. BOEMRE also performs onshore air quality impacts analyses to prevent significant onshore air quality deterioration from OCS activities.

BOEMRE continuously strives to improve its oversight of OCS flaring and venting. New regulations, published in April 2010, require operators to install flare/vent meters on large platforms and also to report gas flared separately from gas vented. These regulatory changes will provide more accurate measurements of GHG emissions.

Given the existing restrictions on OCS flaring and venting, there is minimal opportunity to further reduce the overall volume of gas flared and vented. However, the global warming potential of GHG emissions could be reduced if BOEMRE were to require operators to flare instead of vent (when the release of natural gas is necessary). Such a requirement would reduce the global warming potential of GHG emissions by converting most methane to carbon dioxide as it is released. The workshop will address this topic.

It is difficult to estimate the impact that flaring instead of venting would have on GHG emissions until BOEMRE gathers the more accurate data required by new regulations (which require the installation of flare/vent meters and the separate reporting of flare and vent volumes). Furthermore, it is impractical, if not impossible, to eliminate all venting. Even if 100 percent of the released OCS gas could be flared instead of vented, the impact on total U.S. GHG emissions would be very small.

In 2008, U.S. GHG emissions totaled 7.668×10^9 tons of carbon dioxide equivalent (CO_2e). Of that total, only 30.9×10^6 tons of CO_2e, or 0.40 percent, were related to OCS oil and gas production (including platform and non-platform sources), and flaring and venting activities represent only a fraction of that amount.

Based on several assumptions, estimates, and existing analyses, BOEMRE roughly approximated the impact that might occur if it were to mandate flaring over venting. These estimates indicate that such a requirement would reduce total U.S. GHG emissions by less than 0.05 percent. However, the accuracy of these estimates will improve over the next few years now that regulations at 30 CFR part 250, subpart K have been implemented. Reported OCS flare and vent volumes could increase or decrease based solely on improved reporting accuracy. In any event, further analysis may shed light on whether flaring rather than venting natural gas is cost effective from a GHG perspective, even if the total amount of GHGs is small.

Workshop Presentations

In order to assist BOEMRE, assess the need for regulations on this topic, and ascertain the framework for any such regulations, interested parties are encouraged to register for the workshop and present their recommendations on the following topics:

- The impact of flaring versus venting on GHG emissions;
- If BOEMRE requires flaring instead of venting, whether this mandate should apply to all (new and existing) facilities, apply only to facilities emitting above a certain threshold, and what acceptable threshold levels should be;
- Technical and/or economical feasibility of retrofitting some or all existing facilities with flare tips;
- Flare tip technology and/or combustion efficiency;
- Emissions reduction;
- Existing worldwide best practices that could reduce GHG emissions from flaring and venting;
- Safety issues associated with requiring flaring instead of venting on OCS facilities;
- Variables and/or methods that should be used to evaluate the cost versus benefit of flaring instead of venting; and
- Equipment (specific components) that have to emit natural gas locally instead of the gas being routed to a flare tip due to safety, practical, or other reasons, as well as acceptable/or recommended volumes of natural gas emissions that would be associated with this equipment.

Note that the primary focus of this workshop will be to receive feedback from all interested and potentially affected parties in advance of any rulemaking. BOEMRE anticipates that the agenda of the workshop will be predominantly presentations by those interested parties in order for BOEMRE to receive their input. In order to present at and/or attend this workshop, you must register in advance.

Registration: There is no registration fee for this workshop. However, to assess the number of participants, BOEMRE requests participants to register with Ms. Robin Vaughn by phone at (504) 736–2675, or by e-mail at *robin.vaughn@boemre.gov*, prior to the meeting. The deadline to register is February 28, 2011. Seating is limited and the number of attendees from each organization may have to be restricted.

- BOEMRE encourages you to submit your presentations and/or attend the workshop.
- We will also consider any questions submitted in advance so that the workshop can focus on key topics.

Please submit the above to Ms. Robin Vaughn (*robin.vaughn@boemre.gov*) by February 28, 2011. You may also submit written comments for BOEMRE's consideration up to 30 days after the conclusion of this workshop. Written comments should be submitted to *http://www.regulations.gov.* In the entry entitled "Enter Keyword or ID," enter Docket ID BOEM–2010–0042 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this notice. BOEMRE will post all comments.

Paperwork Reduction Act of 1995 (PRA) Statement

This **Federal Register** Notice does not refer to or impose any information collection subject to the PRA.

Dated: November 9, 2010.

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–32674 Filed 12–28–10; 8:45 am]

BILLING CODE 4310–MR–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2010–5]

Gap in Termination Provisions

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry: Extension of comment period

SUMMARY: The Copyright Office of the Library of Congress is extending the time in which comments can be filed in response to its Notice of Proposed Rulemaking to amend its regulations governing notices of termination of certain grants of transfers and licenses of copyright under section 203 of the Copyright Act of 1976.

DATES: Comments must be received on or before January 24, 2011.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/termination.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–0796 for special instructions.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On November 26, 2010, the Copyright Office published a notice of proposed rulemaking and request for comments relating to recordation of notices of termination of transfers of copyright under Section 203 of the Copyright Act in circumstances where a grant was agreed to prior to January 1, 1978, but the work in question was created on or after January 1, 1978. The notice stated that comments would be due on December 27, 2010.

The Office has been contacted by representatives of interested parties who have stated that in light of the complexity of the issues raised in the notice and in light of the holidays, they request an extension of time to submit comments in order to more thoroughly analyze the issues.

Although the Register of Copyrights had hoped to issue a final rule by the end of this year, the Office wants to ensure that interested parties are given sufficient time to formulate and submit their views. Accordingly, the deadline for submission of comments is being extended to Monday, January 24, 2011.

Dated: December 22, 2010.

David O. Carson,

General Counsel.

[FR Doc. 2010–32864 Filed 12–28–10; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, 1036, 1037, 1065, 1066, and 1068

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 534, and 535

[EPA–HQ–OAR–2010–0162; FRL–9219–4; NHTSA 2010–0079]

RIN 2060–AP61; RIN 2127–AK74

Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles

AGENCIES: Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed rules; correction.

SUMMARY: NHTSA and EPA published in the **Federal Register** of November 30, 2010, proposed rules to establish a comprehensive Heavy-Duty National Program that will increase fuel efficiency and reduce greenhouse gas emissions for on-road heavy-duty vehicles, responding to the President's directive on May 21, 2010, to take coordinated steps to produce a new generation of clean vehicles. That document inadvertently contained some incorrect fuel consumption values in NHTSA-specific tables in the preamble that resulted from using an incorrect conversion factor for determining CO_2 emissions to equivalent fuel consumption for gasoline fuel. That document also contained some rounding errors in NHTSA-specific tables in the preamble. This document corrects the rounding errors by adopting a uniform rounding approach for all fuel consumption equivalents for those NHTSA-specific tables and makes the appropriate corrections to the conversions.

FOR FURTHER INFORMATION CONTACT: Rebecca Yoon, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION: NHTSA and EPA published in the **Federal Register** of November 30, 2010, proposed rules to establish a comprehensive Heavy-Duty National Program that will increase fuel efficiency and reduce greenhouse gas emissions for on-road heavy-duty vehicles, responding to the President's directive on May 21, 2010, to take coordinated steps to produce a new generation of clean vehicles. That document inadvertently contained some incorrect fuel consumption values in NHTSA-specific tables in the preamble that resulted from using an incorrect conversion factor for determining CO_2 emissions to equivalent fuel consumption for gasoline fuel. The correct values that should have been used in the document are a factor of 1,018 grams of CO_2 per gallon of diesel for conversion of diesel fuel, and a factor of 8,887 grams of CO_2 per gallon of gasoline for gasoline.

That document also contained some rounding errors in NHTSA-specific tables in the preamble. This document corrects the rounding errors by adopting a uniform rounding approach for all fuel consumption equivalents and makes the

appropriate corrections to the conversions. These changes are made to several NHTSA-specific tables and in several places in the NHTSA-specific text of the preamble. The proposed regulatory text for both NHTSA and EPA is not affected.

In FR Doc. 2010–28120, appearing on page 74152 in the **Federal Register** of Tuesday, November 30, 2010, the following corrections are made:

1. On page 74176, correct Table II–1 and accompanying footnote 39 by revising them to read as follows:

TABLE II–1—HEAVY-DUTY COMBINATION TRACTOR EMISSIONS AND FUEL CONSUMPTION STANDARDS

	Day cab		Sleeper cab
	Class 7	Class 8	Class 8
2014 Model Year CO_2 Grams per Ton-Mile			
Low Roof	104	79	65
Mid Roof	104	79	70
High Roof	118	87	73
2014–2016 Model Year Gallons of Fuel per 1,000 Ton-Mile [39]			
Low Roof	10.2	7.8	6.4
Mid Roof	10.2	7.8	6.9
High Roof	11.6	8.5	7.2
2017 Model Year CO_2 Grams per Ton-Mile			
Low Roof	103	78	64
Mid Roof	103	78	69
High Roof	116	86	71
2017 Model Year Gallons of Fuel per 1,000 Ton-Mile			
Low Roof	10.1	7.7	6.3
Mid Roof	10.1	7.7	6.8
High Roof	11.4	8.4	7.0

2. On page 74194, correct Tables II–7 and II–8 by revising them to read as follows:

TABLE II–2—COEFFICIENTS FOR PROPOSED HD PICKUP AND VAN TARGET STANDARDS [74]

Model year	a	b	c	d
Diesel Vehicles:				
2014	0.0478	368	0.000470	3.61
2015	0.0474	366	0.000466	3.60
2016	0.0460	354	0.000452	3.48
2017	0.0445	343	0.000437	3.37
2018 and later	0.0416	320	0.000409	3.14
Gasoline Vehicles:				
2014	0.0482	371	0.000542	4.17
2015	0.0479	369	0.000539	4.15
2016	0.0469	362	0.000528	4.07
2017	0.0460	354	0.000518	3.98
2018 and later	0.0440	339	0.000495	3.81

TABLE II–3—COEFFICIENTS PROPOSED FOR NHTSA'S FIRST ALTERNATIVE AND EPA'S ALTERNATIVE HD PICKUP AND VAN TARGET STANDARDS

Model year	a	b	c	d
Diesel Vehicles:				
2014 [a]	0.0478	368	0.000470	3.61
2015 [a]	0.0474	366	0.000466	3.60
2016–2018	0.0440	339	0.000432	3.33
2019 and later	0.0416	320	0.000409	3.14
Gasoline Vehicles:				
2014 [a]	0.0482	371	0.000542	4.17
2015 [a]	0.0479	369	0.000539	4.15

[39] Manufacturers may voluntarily opt-in to the NHTSA fuel consumption program in 2014 or 2015. If a manufacturer opts-in, the program becomes mandatory. See Section I.B.5 for more information about NHTSA's voluntary opt-in program for MYs 2014 and 2015.

TABLE II–3—COEFFICIENTS PROPOSED FOR NHTSA'S FIRST ALTERNATIVE AND EPA'S ALTERNATIVE HD PICKUP AND VAN TARGET STANDARDS—Continued

Model year	a	b	c	d
2016–2018	0.0456	352	0.000513	3.96
2019 and later	0.0440	339	0.000495	3.81

3. On page 74202, correct Table II–11 by revising it to read as follows:

TABLE II–4—PROPOSED VOCATIONAL DIESEL ENGINE STANDARDS OVER THE HEAVY-DUTY FTP CYCLE

Model year	Standard	Light heavy-duty diesel	Medium heavy-duty diesel	Heavy heavy-duty diesel
2014–2016	CO_2 Standard (g/bhp-hr)	600	600	567
	Voluntary Fuel Consumption Standard (gallon/100 bhp-hr)	5.89	5.89	5.57
2017 and Later	CO_2 Standard (g/bhp-hr)	576	576	555
	Fuel Consumption (gallon/100 bhp-hr)	5.66	5.66	5.45

4. On page 74202, in the third column, correct the first sentence of the first complete paragraph by revising it to read as follows: "The baseline 2010 model year CO_2 performance of these heavy-duty gasoline engines over the Heavy-duty FTP cycle is 660 g CO_2/bhp-hr (7.43 gal/100 bhp-hr) in 2010 based on non-GHG certification data provided to EPA by the manufacturers."

5. On page 74202, in the third column, correct the first sentence of the second complete paragraph by revising it to read as follows: "NHTSA is proposing a 7.06 gallon/100 bhp-hr standard for fuel consumption while EPA is proposing a 627 g CO_2/bhp-hr standard tested over the Heavy-duty FTP, effective in the 2016 model year."

6. On page 74220, correct Table III–2 by revising it to read as follows:

TABLE III–5—CLASS 7 AND 8 TRACTOR BASELINE CO_2 EMISSIONS AND FUEL CONSUMPTION

	Class 7		Class 8				
	Day cab		Day cab		Sleeper cab		
	Low/mid roof	High roof	Low/mid roof	High roof	Low roof	Mid roof	High roof
CO_2 (grams CO_2/ton-mile)	111	130	84	96	76	81	89
Fuel Consumption (gal/1,000 ton-mile)	10.9	12.8	8.3	9.4	7.5	8.0	8.6

7. On page 74225, correct Table III–6 by revising it to read as follows:

TABLE III–6—PROPOSED 2014 AND 2017 MODEL YEAR TRACTOR REDUCTIONS

	Class 7		Class 8				
	Day cab		Day cab		Sleeper cab		
	Low/mid roof	High roof	Low/mid roof	High roof	Low roof	Mid roof	High roof
2014 Model Year							
2014 MY Voluntary Fuel Consumption Standard (gallon/1,000 ton-mile)	10.2	11.6	7.8	8.5	6.4	6.9	7.2

[74] The NHTSA proposal provides voluntary standards for model years 2014 and 2015. Target line functions for 2016–2018 are for the second NHTSA alternative described in Section II.C(d)(ii).

TABLE III–6—PROPOSED 2014 AND 2017 MODEL YEAR TRACTOR REDUCTIONS—Continued

	Class 7		Class 8				
	Day cab		Day cab		Sleeper cab		
	Low/mid roof	High roof	Low/mid roof	High roof	Low roof	Mid roof	High roof
2014 MY CO_2 Standard (grams CO_2/ton-mile)	104	118	79	87	65	70	73
Percent Reduction	6%	9%	6%	9%	15%	14%	18%
2017 Model Year							
2017 MY Fuel Consumption Standard (gallon/1,000 ton-mile)	10.1	11.4	7.7	8.4	6.3	6.8	7.0
2017 MY CO_2 Standard (grams CO_2/ton-mile)	103	116	78	86	64	69	71
Percent Reduction	7%	11%	7%	10%	16%	15%	20%

8. On page 74244, correct Table III–12 by revising it to read as follows:

TABLE III–7—BASELINE VOCATIONAL VEHICLE PERFORMANCE

	Vocational vehicle		
	Light heavy-duty	Medium heavy-duty	Heavy heavy-duty
Fuel Consumption Baseline (gallon/1,000 ton-mile)	37.5	22.3	11.3
CO_2 Baseline (grams CO_2/ton-mile)	382	227	115

9. On page 74245, correct Table III–14 by revising it to read as follows:

TABLE III–8—PROPOSED VOCATIONAL VEHICLE STANDARDS AND PERCENT REDUCTIONS

	Vocational vehicle		
	Light heavy-duty	Medium heavy-duty	Heavy heavy-duty
2016 MY Fuel Consumption Standard (gallon/1,000 ton-mile)	35.2	20.8	10.7
2017 MY Fuel Consumption Standard (gallon/1,000 ton-mile)	33.8	20.0	10.5
2014 MY CO_2 Standard (grams CO_2/ton-mile)	358	212	109
2017 MY CO_2 Standard (grams CO_2/ton-mile)	344	204	107
Percent Reduction from 2010 baseline in 2014 MY	6%	7%	5%
Percent Reduction from 2010 baseline in 2017 MY	10%	10%	7%

10. On page 74245, in the third column, correct the second sentence of the third paragraph by revising it to read as follows: "The agencies are projecting a 100% application rate of this technology package to the heavy-duty gasoline engines, which results in a CO_2 standard of 627 g/bhp-hr and a fuel consumption standard of 7.06 gallon/100 bhp-hr."

11. On page 74440, correct Table 1 by revising it to read as follows:

TABLE 1—EQUATION COEFFICIENTS FOR VEHICLE CONFIGURATION TARGET STANDARDS

Model year	c	d
Alternative 1—Fixed Target Standards		
Compression-Ignition Vehicle Coefficients for Model Years 2016 and Later		
2016 through 2018	0.000432	3.33
2019 and later	0.000409	3.14

TABLE 1—EQUATION COEFFICIENTS FOR VEHICLE CONFIGURATION TARGET STANDARDS—Continued

Model year	c	d
Spark-Ignition Vehicle Coefficients for Model Years 2016 and Later		
2016 through 2018	0.000513	3.96
2019 and later	0.000495	3.81
Alternative 2—Phased-in Target Standards Compression-Ignition Vehicle Coefficients for Model Years 2016 and Later		
2016	0.000452	3.48
2017	0.000437	3.37
2018 and later	0.000409	3.14
Spark-Ignition Vehicle Coefficients for Model Years 2016 and Later		
2016	0.000528	4.07
2017	0.000518	3.98
2018 and later	0.000495	3.81

12. On page 74442, correct Table 2 by revising it to read as follows:

TABLE 2—VOLUNTARY COMPLIANCE EQUATION COEFFICIENTS FOR VEHICLE FUEL CONSUMPTION STANDARDS

Model year	c	d
Compression-Ignition Vehicle Coefficients for Voluntary Compliance in Model Years 2013 Through 2015		
2013 and 14	0.000470	3.61
2015	0.000466	3.60
Spark-Ignition Vehicle Coefficients for Voluntary Compliance in Model Years 2013 Through 2015		
2013 and 14	0.000542	4.17
2015	0.000539	4.15

13. On page 74444, correct Table 4 by revising it to read as follows:

TABLE 4—TRUCK TRACTOR FUEL CONSUMPTION STANDARDS

Regulatory subcategories	Day cab		Sleeper cab
	Class 7	Class 8	Class 8
Fuel Consumption Standards (gallons per 1000 ton-miles) Effective for Model Years 2017 and Later			
Low Roof	10.1	7.7	6.3
Mid Roof	10.1	7.7	6.8
High Roof	11.4	8.4	7.0
Fuel Consumption Standards (gallons per 1000 ton-miles) Effective for Model Years 2013 to 2016			
Low Roof	10.2	7.8	6.4
Mid Roof	10.2	7.8	6.9
High Roof	11.6	8.5	7.2

14. On page 74445, correct Table 5 by revising it to read as follows:

TABLE 5—HEAVY-DUTY ENGINE STANDARDS

Fuel Consumption Standards (gallons per 100 bhp-hr)

Regulatory subcategory	Light heavy-duty compression-ignition engine	Medium heavy-duty compression-ignition engine		Heavy heavy-duty compression-ignition engine		Spark-ignition engines
Truck Application	Vocational	Vocational	Tractor	Vocational	Tractor	All.
Effective Model Years	2017 and later					2016 and later.
Fuel Consumption Standard.	5.66	5.66	4.78	5.45	4.52	7.06.

Fuel Consumption Standards for Voluntary Compliance (gallons per 100 bhp-hr)

Regulatory subcategory	Light heavy-duty diesel engine	Medium heavy-duty diesel engine		Heavy heavy-duty diesel engine		Spark-ignition engine
Truck Application	Vocational	Vocational	Tractor	Vocational	Tractor	All.
Effective Model Years	2013 through 2016					2013 through 2015.

TABLE 5—HEAVY-DUTY ENGINE STANDARDS—Continued

Regulatory subcategory						
Voluntary Fuel Consumption Standard.	5.89	5.89	4.93	5.57	4.67	7.06.

Issued: December 20, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, Department of Transportation.

Issued: December 20, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation Air Quality, Environmental Protection Agency.

[FR Doc. 2010–32726 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1166]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: Comments are to be submitted on or before March 29, 2011.

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

You may submit comments, identified by Docket No. FEMA–B–1166, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Levy County, Florida, and Incorporated Areas				
Bronson North Ditch	At Ifshie Avenue	None	+55	Town of Bronson, Unincorporated Areas of Levy County.
	Approximately 0.4 mile upstream of U.S. Route 27A	None	+57	
Bronson South Ditch	Just upstream of Lime Rock Road	None	+59	Town of Bronson, Unincorporated Areas of Levy County.
	Approximately 600 feet upstream of West Main Street	None	+60	
Long Pond	At Levy County Route 345	None	+27	City of Chiefland, Unincorporated Areas of Levy County.
	Just downstream of Northwest 60th Street	None	+28	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Chiefland
Maps are available for inspection at City Hall, 214 East Park Avenue, Chiefland, FL 32626.

Town of Bronson
Maps are available for inspection at the Town Hall, 650 Oak Street, Bronson, FL 32621.

Unincorporated Areas of Levy County
Maps are available for inspection at the Levy County Building Department, 9010 Northeast 79th Street, Bronson, FL 32621.

Huntingdon County, Pennsylvania (All Jurisdictions)				
Crooked Creek	Approximately 0.88 mile downstream of Beaver Lane	None	+628	Township of Walker.
	Approximately 0.70 mile downstream of Beaver Lane	None	+633	
Hares Valley Creek	Approximately 800 feet downstream of Pennsylvania Railroad.	None	+586	Township of Union.
	Approximately 500 feet upstream of Pennsylvania Railroad.	None	+586	
Hill Valley Creek	Approximately 240 feet downstream of Norfolk Southern Railroad.	None	+555	Township of Shirley.
	Approximately 90 feet upstream of Norfolk Southern Railroad.	None	+555	
Juniata River	Approximately 0.39 mile downstream of Bridge Street	None	+584	Township of Union.
	Approximately 1,670 feet downstream of Bridge Street	None	+584	
Juniata River	Approximately 0.75 mile downstream of North Jefferson Street.	None	+569	Township of Brady, Township of Shirley.
	Approximately 0.53 mile downstream of North Jefferson Street.	None	+569	
Juniata River	Just upstream of U.S. Route 22 (William Penn Highway).	+612	+613	Township of Henderson, Township of Smithfield.
	Approximately 200 feet upstream of U.S. Route 22 (William Penn Highway).	+613	+614	
Juniata River	Approximately 2 miles downstream of the confluence with Shaver Creek.	None	+671	Township of Logan.
	Approximately 140 feet downstream of the confluence with Shaver Creek.	None	+674	
Juniata River	Approximately 1.72 miles upstream of Bridge Street (Cypress Island Bridge).	None	+638	Township of Porter.
	Approximately 1.78 miles upstream of Bridge Street (Cypress Island Bridge).	None	+638	
Little Juniata River	Approximately 1,450 feet upstream of Norfolk Southern Railroad.	None	+847	Borough of Birmingham.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.52 mile upstream of Norfolk Southern Railroad.	None	+848	
Little Juniata River	Approximately 440 feet downstream of the Pemberton Road Bridge.	None	+797	Township of Spruce Creek.
	Approximately 300 feet downstream of Birmingham Pike (Railroad Bridge).	None	+813	
Murray Run	Approximately 280 feet downstream of Murray Run Road.	None	+691	Township of Henderson.
	Approximately 170 feet downstream of Murray Run Road.	None	+691	
Standing Stone Creek	Approximately 1.57 miles downstream of Stone Creek Ridge Road.	None	+661	Township of Oneida.
	Approximately 1.55 miles downstream of Stone Creek Ridge Road.	None	+661	
Three Springs Creek	Approximately 800 feet downstream of Hudson Street	None	+700	Borough of Three Springs.
	Approximately 800 feet upstream of Elliots Run Road ..	None	+713	
Unnamed Tributary to Shoup Run.	Approximately 400 feet upstream of Broad Top Mountain Road.	None	+1139	Township of Carbon.
	Approximately 520 feet upstream of Broad Top Mountain Road.	None	+1142	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Birmingham
Maps are available for inspection at the Borough Building, 2450 Tyrone Street, Birmingham, PA 16686.

Borough of Three Springs
Maps are available for inspection at the Borough Building, 8444 Hudson Street, Three Springs, PA 17264.

Township of Brady
Maps are available for inspection at the Brady Township Building, 11311 Beatty Road, Mill Creek, PA 17060.

Township of Carbon
Maps are available for inspection at the Carbon Township Building, 20188 Little Valley Road, Saxton, PA 16678.

Township of Henderson
Maps are available for inspection at the Henderson Township Building, 9024 Sugar Grove Road, Huntingdon, PA 16652.

Township of Logan
Maps are available for inspection at the Logan Township Building, 7228 Diamond Valley, Alexandria, PA 16611.

Township of Oneida
Maps are available for inspection at the Oneida Township Building, 9775 Blair Road, Huntingdon, PA 16652.

Township of Porter
Maps are available for inspection at the Porter Township Building, 7551 Bridge Street, Alexandria, PA 16611.

Township of Shirley
Maps are available for inspection at the Shirley Township Building, 15480 Croghan Pike, Shirleysburg, PA 17260.

Township of Smithfield
Maps are available for inspection at the Smithfield Township Building, 202 South 13th Street, Suite. 3, Huntingdon, PA 16652.

Township of Spruce Creek
Maps are available for inspection at the Spruce Creek Township Building, 4602 Eden Road, Tyrone, PA 16686.

Township of Union
Maps are available for inspection at the Union Township Building, 14129 Trough Creek Valley Pike, Huntingdon, PA 16652.

Township of Walker
Maps are available for inspection at the Walker Township Building, 5568 Bouquet Street, McConnellstown, PA 16660.

Clark County, Washington, and Incorporated Areas

Burnt Bridge Creek	Just upstream of I–205	+193	+192	City of Vancouver, Unincorporated Areas of Clark County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1,056 feet upstream of Northeast 152nd Street.	None	+200	
China Ditch	Just upstream of Northeast Ward Road	None	+252	Unincorporated Areas of Clark County.
	Approximately 0.4 mile upstream of Northeast 144th Street.	None	+275	
Curtin Creek	At the confluence with Salmon Creek	+174	+172	Unincorporated Areas of Clark County.
	Approximately 700 feet upstream of Anderson Road	None	+260	
Dead Lake	Entire shoreline within community	None	+191	City of Camas, Unincorporated Areas of Clark County.
Fifth Plain Creek	At the confluence with Lacamas Creek	None	+208	City of Vancouver, Unincorporated Areas of Clark County.
	Approximately 0.7 mile upstream of Northeast Davis Road.	None	+342	
Gee Creek	Just downstream of Burlington Northern Santa Fe Railroad.	+29	+27	City of Ridgefield, Unincorporated Areas of Clark County.
	Approximately 0.5 mile upstream of I–5	None	+315	
Lacamas Creek	Just downstream of Northeast 3rd Avenue	None	+35	City of Camas, Unincorporated Areas of Clark County.
	Approximately 1.3 miles upstream of Northeast 3rd Avenue.	None	+163	
	Approximately 1 mile downstream of Northeast Goodwin Road.	None	+191	
	Approximately 0.5 mile upstream of Northeast 217th Avenue.	None	+281	
Lake Lacamas	Entire shoreline within community	None	+191	City of Camas, Unincorporated Areas of Clark County.
Mill Creek	At the confluence with Salmon Creek	+138	+137	City of Battle Ground, Unincorporated Areas of Clark County.
	Just downstream of Northwest 20th Avenue	None	+279	
Packard Creek	Approximately 375 feet downstream of Northwest 179th Street.	None	+66	Unincorporated Areas of Clark County.
	Approximately 1,040 feet upstream of Northwest 11th Avenue.	None	+290	
Padden Creek	Approximately 460 feet downstream of Northeast 83rd Street.	None	+214	Unincorporated Areas of Clark County.
	Approximately 160 feet upstream of Northeast 88th Street.	None	+228	
Round Lake	Entire shoreline within community	None	+191	City of Camas, Unincorporated Areas of Clark County.
Salmon Creek	At the confluence with Weaver Creek	+211	+210	City of Battle Ground, Unincorporated Areas of Clark County.
	Just upstream of Risto Road	None	+363	
Spring Branch Creek	At the confluence with Lacamas Creek	+200	+198	Unincorporated Areas of Clark County.
	Approximately 1.25 miles upstream of the confluence with Lacamas Creek.	+202	+200	
Weaver Creek	Approximately 320 feet upstream of Northeast 169th Street.	None	+215	City of Battle Ground, Unincorporated Areas of Clark County.
	Approximately 1.1 miles upstream of Northeast 152nd Avenue.	None	+345	
Whipple Creek	Just downstream of Northwest Krieger Road	None	+28	Unincorporated Areas of Clark County.
	Approximately 0.8 mile upstream of Northeast 179th Street.	None	+241	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Battle Ground
Maps are available for inspection at 109 Southwest 1st Street, Battle Ground, WA 98604.

City of Camas
Maps are available for inspection at 616 Northeast 4th Avenue, Camas, WA 98607.

City of Ridgefield
Maps are available for inspection at 230 Pioneer Street, Ridgefield, WA 98642.

City of Vancouver
Maps are available for inspection at 210 East 13th Street, Vancouver, WA 98668.

Unincorporated Areas of Clark County
Maps are available for inspection at 1300 Franklin Street, Vancouver, WA 98668.

Preston County, West Virginia, and Incorporated Areas

Back Run	At the confluence with Deckers Creek	None	+1698	Unincorporated Areas of Preston County.
	Approximately 1,670 feet upstream of the confluence with Deckers Creek.	None	+1702	
Barnes Run	At the confluence with Cherry Run	None	+1702	Unincorporated Areas of Preston County.
	Approximately 450 feet upstream of State Route 26	None	+2075	
Barnes Run Tributary 2	At the confluence with Barnes Run	None	+1750	Unincorporated Areas of Preston County.
	Approximately 0.9 mile upstream of the confluence with Barnes Run.	None	+1976	
Big Sandy Creek	Approximately 310 feet downstream of the confluence of Glade Run.	None	+1507	Town of Brandonville, Unincorporated Areas of Preston County.
	Approximately 300 feet upstream of County Highway 4/2.	None	+1550	
Big Sandy Creek Tributary 1.	At the confluence with Big Sandy Creek	None	+1530	Unincorporated Areas of Preston County.
	Approximately 0.9 mile upstream of County Highway 8	None	+1791	
Bull Run	Approximately 580 feet upstream of the confluence with Cheat River.	None	+923	Unincorporated Areas of Preston County.
	Approximately 420 feet upstream of County Highway 21.	None	+1419	
Bull Run Tributary 1	At the confluence with Bull Run	None	+1325	Unincorporated Areas of Preston County.
	Approximately 1.4 miles upstream of County Highway 21/2.	None	+1743	
Cheat River	Approximately 1.9 miles downstream of the Albright Power Plant Dam.	None	+1198	Town of Rowlesburg, Unincorporated Areas of Preston County.
	At the Tucker County boundary	None	+1483	
Cherry Run	Approximately 250 feet downstream of the confluence of Barnes Run.	None	+1699	Unincorporated Areas of Preston County.
	Approximately 1.8 miles upstream of County Highway 5/2.	None	+2272	
Cherry Run Tributary 1	At the confluence with Cherry Run	None	+1969	Unincorporated Areas of Preston County.
	Approximately 1,560 feet downstream of County Highway 5.	None	+2069	
Cherry Run Tributary 2	At the confluence with Cherry Run	None	+1972	Unincorporated Areas of Preston County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.8 mile upstream of the confluence with Cherry Run Tributary 2A.	None	+2099	
Cherry Run Tributary 2A	At the confluence with Cherry Run Tributary 2	None	+2045	Unincorporated Areas of Preston County.
	Approximately 0.5 mile upstream of the confluence with Cherry Run Tributary 2.	None	+2091	
Cherry Run Tributary 3	At the confluence with Cherry Run	None	+2017	Unincorporated Areas of Preston County.
	Approximately 1.1 miles upstream of the confluence with Cherry Run.	None	+2236	
Deckers Creek	At the downstream Monongalia County boundary	None	+1488	Town of Masontown, Town of Rowlesburg, Unincorporated Areas of Preston County.
	At the upstream Monongalia County boundary	None	+1861	
Deckers Creek Tributary 1	At the confluence with Deckers Creek	None	+1709	Unincorporated Areas of Preston County.
	Approximately 300 feet upstream of Zinn Chapel Road	None	+1741	
Dillan Creek	At the confluence with Deckers Creek	None	+1701	Unincorporated Areas of Preston County.
	Approximately 0.8 mile upstream of Dillan Creek Road	None	+1749	
Dillan Creek Tributary 1	At the confluence with Dillan Creek	None	+1701	Unincorporated Areas of Preston County.
	Approximately 0.9 mile upstream of County Highway 7/4.	None	+1831	
Dillan Creek Tributary 2	At the confluence with Dillan Creek	None	+1701	Unincorporated Areas of Preston County.
	Approximately 1.9 miles upstream of the confluence with Dillan Creek.	None	+1919	
Glade Run	At the confluence with Big Sandy Creek	None	+1508	Unincorporated Areas of Preston County.
	Approximately 1.7 miles upstream of County Highway 6.	None	+1814	
Glade Run East	At the confluence with Big Sandy Creek	None	+1531	Unincorporated Areas of Preston County.
	Approximately 960 feet upstream of County Highway 26/63.	None	+2202	
Glade Run Tributary 1	At the confluence with Glade Run	None	+1655	Unincorporated Areas of Preston County.
	Approximately 0.5 mile upstream of County Highway 6/1.	None	+1716	
Glade Run Tributary 2	At the confluence with Glade Run	None	+1667	Unincorporated Areas of Preston County.
	Approximately 0.6 mile upstream of County Highway 6/1.	None	+1834	
Hog Run	At the confluence with Cherry Run	None	+1838	Unincorporated Areas of Preston County.
	Approximately 0.8 mile upstream of the confluence with Hog Run Tributary 3.	None	+2062	
Hog Run Tributary 1	At the confluence with Hog Run	None	+2019	Unincorporated Areas of Preston County.
	Approximately 1,830 feet upstream of State Route 26	None	+2077	
Hog Run Tributary 2	At the confluence with Hog Run	None	+2036	Unincorporated Areas of Preston County.
	Approximately 1,820 feet upstream of State Route 26	None	+2061	
Hog Run Tributary 3	At the confluence with Hog Run	None	+2040	Unincorporated Areas of Preston County.
	Approximately 1,190 feet upstream of State Route 26	None	+2082	
Kanes Creek	At the confluence with Deckers Creek	None	+1701	Town of Reedsville, Unincorporated Areas of Preston County.
	Approximately 0.6 mile upstream of County Highway 56.	None	+1781	
Little Sandy Creek	At the confluence with Big Sandy Creek	None	+1537	Unincorporated Areas of Preston County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.44 mile upstream of County Highway 8.	None	+1544	
Little Wolf Creek	At the confluence with Wolf Creek	None	+1460	Unincorporated Areas of Preston County.
	Approximately 300 feet upstream of County Highway 110.	None	+1596	
Maple Run	Approximately 570 feet upstream of the confluence with Youghiogheny River.	None	+2425	Unincorporated Areas of Preston County.
	Approximately 0.9 mile upstream of County Highway 116/2.	None	+2645	
Middle Run	At the confluence with Bull Run	None	+1329	Unincorporated Areas of Preston County.
	Approximately 1.8 miles upstream of the confluence with Bull Run.	None	+1724	
Mill Run	At the confluence with Cherry Run	None	+1864	Unincorporated Areas of Preston County.
	Approximately 1.6 miles upstream of the confluence with Mill Run Tributary 2.	None	+2387	
Mill Run Tributary 1	At the confluence with Mill Run	None	+1971	Unincorporated Areas of Preston County.
	Approximately 1.2 miles upstream of the confluence with Mill Run.	None	+2177	
Mill Run Tributary 2	At the confluence with Mill Run	None	+2054	Unincorporated Areas of Preston County.
	Approximately 640 feet upstream of County Highway 112.	None	+2246	
Piney Run	At the confluence with Cherry Run	None	+1843	Unincorporated Areas of Preston County.
	Approximately 1.2 miles upstream of County Highway 5.	None	+1869	
Saltlick Creek	At the confluence with the Cheat River	+1389	+1399	Town of Rowlesburg, Unincorporated Areas of Preston County.
	Approximately 0.7 mile upstream of F Road	None	+2000	
Spruce Run	At the confluence with Saltlick Creek	None	+1580	Unincorporated Areas of Preston County.
	Approximately 2.1 miles upstream of County Highway 86.	None	+1796	
Swamp Run	At the confluence with Dillan Creek	None	+1701	Unincorporated Areas of Preston County.
	Approximately 0.5 mile upstream of Herring Road	None	+1745	
Wolf Creek	At the confluence with the Cheat River	None	+1449	Unincorporated Areas of Preston County.
	Approximately 0.5 mile upstream of County Highway 110.	None	+1542	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Brandonville
Maps are available for inspection at the Brandonville Town Hall, 37 Poplar Street, Bruceton Mills, WV 26525.

Town of Masontown
Maps are available for inspection at Main Pharmacy, 160 Main Street, Masontown, WV 26542.

Town of Reedsville
Maps are available for inspection at the Town Hall, 207 South Robert Stone Way, Reedsville, WV 26547.

Town of Rowlesburg
Maps are available for inspection at the Community Building, 44 Poplar Street, Rowlesburg, WV 26425.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of Preston County				
Maps are available for inspection at the Preston County Office of Emergency Management, 103½ West Main Street, Kingwood, WV 26537.				

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

Dated: December 10, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–32702 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 75, No. 249
Wednesday, December 29, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Grain Inspection Advisory Committee Reestablishment

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to reestablish committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Secretary of Agriculture has determined that the Advisory Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, Designated Federal Official, GIPSA, USDA, Rm. 1633–S, 1400 Independence Ave., SW., Washington, DC 20250–3604; Telephone (202) 205–8281; Fax (202) 690–2755; E-mail *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the Administrator of GIPSA with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*). Information about the Advisory Committee is available on the GIPSA Web site at *http://www.gipsa.usda.gov.* Under the section, "I Want To * * *," select "Learn about the Grain Inspection Advisory Committee."

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–32777 Filed 12–28–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Census Barriers, Attitudes, and Motivators Survey (CBAMS) II

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before February 28, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Monica Wroblewski at 301.763.8813 or by e-mail to *monica.j.wroblewski@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau, in collaboration with a primary contractor and 14 subcontractors, created hundreds of advertisements in 28 different languages as part of the 2010 Census Integrated Communications Campaign. This effort was part of the Census Bureau's integrated approach to communications activities for the 2010 Census, combining advertising, partnerships, public relations, Census in Schools, Road Tour, and digital media with the Census Bureau's internal operations.

The Census 2010 Publicity Office (C2PO) conducted a series of qualitative, quantitative, attitudinal, and behavioral research initiatives to serve as a foundation for the 2010 Census Integrated Communications Program. Research results informed and validated marketing decisions throughout the entire campaign. C2PO researched all elements of the campaign across audiences to ensure that the messaging resonated with the targeted communities.

The Census Barriers, Attitudes, and Motivators Survey (CBAMS), formerly known as the Census Participation Survey, was a cornerstone research effort for developing messages that would resonate and motivate participation. CBAMS included over 4,000 in-depth interviews: about 3,000 by phone and another 1,000 in person to ensure coverage in areas that were linguistically, culturally or geographically hard-to-reach as well as areas without phone service (one of the "hard-to-count" factors). The CBAMS sample was probabilistic so that it would be representative of the nation, with oversamples in hard-to-count populations; data collection for CBAMS occurred in July and August 2008. This survey measured previous Census participation, attitudes towards the Census, knowledge of the purpose of the Census, potential motivators and barriers to Census participation, reactions to potential messages, media consumption, and demographic information.

Analysis of CBAMS data enhanced the cluster segmentation by providing much needed, up-to-date insight into how the target audiences feel about the Census, and why they may or may not participate, to help us develop appropriate messages to address these mindsets. CBAMS revealed five distinct mindsets among the population that varied in their knowledge of and attitudes toward the Census: Leading Edge, Head Nodders, Insulated, Unacquainted, and Cynical Fifth. While there are different cultural contexts that emerged, these mindsets exist throughout the population, regardless of race or ethnicity.

CBAMS II will first replicate, to the extent practicable, the first CBAMS to determine the extent to which mindsets about the Census have changed over time. However, CBAMS II will also be expanded to investigate why non-responders did not mail back their Census forms and to collect additional information to gain further insights into particular mindsets, such as the Cynical

Fifth. In addition, CBAMS II will result in a survey tool—a limited set of questions—that can be used in follow-on research studies to identify the likely segment of a survey respondent. Also, the survey will probe further into respondents' views about the use of Administrative Records and other data sources to get a complete count of the population without direct interviews.

II. Method of Collection

CBAMS II will be administered to a sample of adults. Most interviews will be selected through random-digit-dialing and administered via Computer Assisted Telephone Interviewing (CATI), while a small portion of the interviews will be conducted in-person. The CATI interviews will be conducted on both landline and cellular telephones. The cellular phone sample is designed to reach the young, unattached, mobile population, while the in-person interviews target hard-to-count populations including linguistically isolated Hispanics and Asians, American Indians on reservations, and the rural, economically disadvantaged population.

III. Data

OMB Control Number: 0607–0947.
Form Number: N/A.
Type of Review: Reinstatement of an expired collection.
Affected Public: Individuals.
Estimated Number of Respondents: 4,200.
Estimated Time per Response: 25 minutes.
Estimated Total Annual Burden Hours: 1,750.
Estimated Total Annual Cost: There is no cost to the respondent other than their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C. Section 141.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 23, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–32743 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils From Belgium: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg at (202) 482–1785 or David Neubacher at (202) 482–5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2010, the Department of Commerce ("the Department") published a notice of initiation of administrative review of the countervailing duty order on stainless steel plate in coils from Belgium, covering the period January 1, 2009, through December 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759, 37763 (June 30, 2010). The preliminary results of this administrative review are currently due no later than January 31, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

The Department requires additional time to review, analyze, and verify submitted information and to issue supplemental questionnaires. Therefore, it is not practicable to complete this review within the originally anticipated time limit, and the Department is extending the time limit for completion of the preliminary results by 120 days to no later than May 31, 2011, in accordance with section 751(a)(3)(A) of the Act. Accordingly, the deadline for completion of the preliminary results is now no later than May 31, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 21, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–32863 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601, C–580–602]

Top of the Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results of Sunset Reviews and Revocation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) initiated the third sunset reviews of the antidumping and countervailing duty orders on top of the stove stainless steel cooking ware (cookware) from the Republic of Korea (Korea) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 60731 (October 1, 2010) (*Initiation Notice*). Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking the antidumping and countervailing duty orders on cookware from Korea.

DATES: *Effective Dates:* November 17, 2010—Antidumping Duty Order; November 22, 2010—Countervailing Duty Order;

FOR FURTHER INFORMATION CONTACT: Martha Douthit or Dana Mermelstein, 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) 482–5050 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Orders

The merchandise subject to the antidumping and countervailing duty orders on top of the stove stainless steel cooking ware from Korea includes all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelet pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. On January 24, 1997, and June 17, 1997, respectively, the Department revoked, in part, these orders with respect to certain merchandise, as a result of changed circumstances reviews. *See Certain Stainless Steel Cooking Ware From the Republic of Korea: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order,* 62 FR 3662 (January 24, 1997); and *Certain Stainless Steel Cooking Ware From the Republic of Korea: Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Revocation in Part of Countervailing Duty Order,* 62 FR 32767 (June 17, 1997).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7323.93.00 and 9604.00.00. The HTSUS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Background

On January 20, 1987, the Department published, in the **Federal Register,** the antidumping and countervailing duty orders on cookware from Korea. *See Antidumping Duty Order; Certain Stainless Steel Cooking Ware From the Republic of Korea,* 52 FR 2139 (January 20, 1987); and *Countervailing Duty Order; Certain Stainless Steel Cooking Ware From the Republic of Korea,* 52 FR 2140 (January 20, 1987). In two subsequent sunset reviews of the antidumping and countervailing duty orders, based on affirmative decisions by the Department and the International Trade Commission, the antidumping and countervailing duty orders on cookware from Korea were continued. *See Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan and Korea,* 65 FR 20801 (April 18, 2000); *Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea; Continuation of the Antidumping Duty Order,* 70 FR 69739 (November 17, 2005); and *Continuation of Countervailing Duty Order: Top-of-the-Stove Stainless Steel Cookware from South Korea,* 70 FR 70585 (November 22, 2005).

On October 1, 2010, the Department initiated the current sunset reviews of the antidumping and countervailing duty orders on cookware from Korea, pursuant to section 751(c) of the Act. *See Initiation Notice.* We received no response to the notice of initiation from the domestic industry by the applicable deadline. *See* 19 CFR 351.218(d)(1)(i). As a result, the Department has determined that no domestic interested party intends to participate in the sunset reviews. On October 21, 2010 we notified the International Trade Commission, in writing, that we intend to revoke the antidumping and countervailing duty orders on cookware from Korea. *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3) and 19 CFR 351.222(i)(1)(i), if no interested parties respond to a notice of initiation, the Department shall, within 90 days after the initiation of the review, revoke the order. Because no domestic interested party filed a notice of intent to participate in these reviews, the Department finds that no domestic interested party is participating in the reviews. Thus, we are revoking the antidumping and countervailing duty orders on cookware from Korea.

Effective Dates of Revocation

The effective date of revocation of the antidumping duty order is November 17, 2010; the effective date of revocation for the countervailing duty order is November 22, 2010. These dates are the fifth anniversaries of the date of publication in the **Federal Register** of the most recent notice of continuation of the antidumping and countervailing orders, respectively.

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act, and 19 CFR 351.222(i)(2)(i), the Department intends to notify U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to the antidumping duty and countervailing duty orders entered, or withdrawn from warehouse, for consumption on or after November 17, 2010, and on or after November 22, 2010, respectively.

Entries of subject merchandise prior to the effective dates of revocation will continue to be subject to suspension of liquidation and antidumping duty and countervailing duty cash deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective dates of revocation in response to appropriately filed requests of review.

These five-year (sunset) reviews and notice are issued and published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: December 22, 2010.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32869 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–508]

Porcelain-on-Steel Cooking Ware From Taiwan: Final Results of Sunset Review and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2010, the Department of Commerce (the Department) initiated the third sunset review of the antidumping duty order on porcelain-on-steel cooking ware (POS cooking ware) from Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 60731 (October 1, 2010) (*Initiation Notice*). Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking the antidumping duty order on POS cooking ware from Taiwan.

DATES: *Effective Date:* November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Martha Douthit or Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1391.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this antidumping duty order is porcelain-on-steel cooking ware from Taiwan that does not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware and teakettles are not subject to the order. The merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) number 7323.94.00. HTSUS item numbers are provided for convenience and customs purposes. The written description of the scope remains dispositive.

Background

On December 2, 1986, the Department published, in the **Federal Register**, the antidumping duty order on POS cooking ware from Taiwan. *See Antidumping Duty Order; Porcelain-on-Steel Cooking Ware from Taiwan,* 51 FR 43416 (December 2, 1986). In two subsequent sunset reviews, based on affirmative decisions by the Department and the International Trade Commission, the antidumping duty order on POS cooking ware from Taiwan was continued. *See Continuation of Antidumping Duty Orders: Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan,* 65 FR 20136 (April 14, 2000); *Porcelain-on-Steel Cooking Ware from the People's Republic of China and Taiwan; Continuation of Antidumping Duty Orders,* 70 FR 70581 (November 22, 2005).

On October 1, 2010, the Department initiated the current sunset review of the antidumping duty order on POS cooking ware from Taiwan, pursuant to section 751(c) of the Act. *See Initiation Notice.* We received no response to the notice of initiation from the domestic industry by the applicable deadline. *See* 19 CFR 351.218(d)(1)(i). As a result, the Department has determined that no domestic interested party intends to participate in the sunset review. *See* 19 CFR 351.218(d)(1)(iii)(B). On October 21, 2010, we notified the International Trade Commission, in writing, that we intend to revoke the antidumping duty order on POS cooking ware from Taiwan. *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate in the sunset review, the Department shall, within 90 days after the initiation of the review, revoke the order. Because no domestic interested party filed a timely notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, we are revoking the antidumping duty order on POS cooking ware from Taiwan.

Effective Date of Revocation

The effective date of revocation is November 22, 2010, the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of the antidumping duty order. *See* 19 CFR 351.222(i)(2)(i). Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this antidumping duty order entered, or withdrawn from warehouse, for consumption, on or after November 22, 2010.

Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of the order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year (sunset) review and notice are issued and published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: December 21, 2010.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32771 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–910]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 31, 2010, the U.S. Department of Commerce (the "Department") published a notice of initiation of an administrative review of the antidumping duty order on circular welded carbon quality steel pipe ("CWP") from the People's Republic of China ("PRC"). This administrative review was initiated on 18 exporters of CWP from the PRC. We are now rescinding this administrative review in full.

DATES: *Effective Date:* December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2010, the Department published in the **Federal Register** the notice of opportunity to request an administrative review of the antidumping duty order on CWP from the PRC for the period July 1, 2009, through June 30, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 38074, 38075 (July 1, 2010). On August 2, 2010, the Department received a timely request from the Ad Hoc Coalition For Fair Pipe Imports and its individual members, Allied Tube & Conduit, IPSCO Tubulars, Inc., Sharon Tube Company, Western Tube & Conduit Corporation, and Wheatland Tube Company (collectively, "Petitioner"), that the Department conduct an administrative review of the antidumping duty order on CWP from the PRC, covering 18 exporters of CWP from the PRC. No other party requested an administrative review of the antidumping duty order on CWP from the PRC. On August 31, 2010, the Department published in the **Federal Register** the notice of initiation of the 2009–2010 administrative review of CWP from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274, 53276 (August 31, 2010).

On September 16, 2010, the Department issued a memorandum providing an opportunity for interested parties to comment on U.S. Customs and Border Protection ("CBP") information to be used by the Department in its respondent selection.

On October 27, 2010, Petitioner filed a letter withdrawing its request for review of the 18 exporters for which the Department initiated this review.

Period of Review

The period of review ("POR") is July 1, 2009, through June 30, 2010.

Scope of the Order

The merchandise subject to the order is certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (*e.g.*, plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term "carbon quality" includes products in which (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials ("ASTM") specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A–53, A–135, and A–795. Structural pipe is made primarily to ASTM specifications A–252 and A–500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing. Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute ("API") API–5L specification, is also covered by the scope of the order when it meets the physical description set forth above and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term "painted" does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The scope of the order does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications.

The pipe products that are the subject of the order are currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope of the order.

Rescission of Antidumping Duty Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Because Petitioner withdrew its review request for all 18 exporters within the 90-day deadline, and no other party requested an administrative review of the antidumping order on CWP from the PRC, in accordance with 19 CFR 351.213(d)(1) the Department is rescinding this administrative review in full.

Assessment Instructions

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For exporters 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: December 22, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–32862 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the Peoples' Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* December 29, 2010.

SUMMARY: The Department of Commerce ("Department") is rescinding the administrative review of non-frozen apple juice concentrate from the

People's Republic of China ("PRC") for the period of review ("POR") June 1, 2009, through May 31, 2010. This rescission is based on the timely withdrawal of request for review by the two interested parties that requested the review, Sanmenxia Luck Fruit Co., Ltd. ("SLFI") and Qin'an Great Wall Fruit Juice and Beverage Co., Ltd. ("Qin'an").

FOR FURTHER INFORMATION CONTACT: Tim Lord, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–7425.

Background

On June 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review on the antidumping order on non-frozen apple juice concentrate from the PRC [1] for the POR June 1, 2009, through May 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 30383, 30384 (June 1, 2010). Based upon requests for review from various parties, on July 28, 2010, the Department initiated an antidumping duty administrative review on non-frozen apple juice concentrate from the PRC, covering two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224, 44226 (July 28, 2010). Due to the probable revocation of the *Order,* SLFI and Qin'an withdrew their requests for review on November 8 and November 9, 2010, respectively.[2] The *Order* was revoked on November 15, 2010. *See Non-Frozen Apple Juice Concentrate From the People's Republic of China: Final Results of Sunset Review and Revocation of Order,* 75 FR 69628 (November 15, 2010). Due to timely withdrawals of all requests for review, we are rescinding this administrative review with respect to all companies.

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China,* 65 FR 35606 (June 5, 2000) ("*Order*").

[2] *See* Certain Non-Frozen Apple Juice Concentrate from the PRC—Withdrawal of SLFI Antidumping Duty Administrative Review Request, dated November 8, 2010; *see* also Qin'an Great Wall Fruit Juice & Beverage Co., Ltd. Withdrawal of Administrative Review Request: 2009–2010 Administrative Review of the Antidumping Duty Order on Non-Frozen Apple Juice Concentrate from the People's Republic of China, dated November 9, 2010.

Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. The regulation further states that the Secretary may extend the deadline if it is reasonable to do so. On October 21, 2010, the Department extended the deadline for withdrawal of administrative review requests by 20 days for both respondents due to the pending revocation of the *Order.* [3] The two respondents in the administrative review, SLFI and Qin'an, withdrew their requests for a review before the deadline. Therefore, the Department is rescinding this review of the *Order* on non-frozen apple juice concentrate from the PRC covering the period June 1, 2009, through May 31, 2010.

Assessment

The Department intends to issue assessment instructions to U.S. Customs and Border Protection ("CBP") 15 days after publication of this rescission notice. The Department will instruct CBP to assess antidumping duties 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).

Notification to Parties

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

[3] *See* Administrative Review of Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China ("PRC"): Extension of Deadline to Withdraw Review Request, dated October 21, 2010.

Dated: December 22, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–32865 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA113

Marine Mammals; File No. 14245; Permit To Conduct Research on Marine Mammals; Receipt of Application

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, National Marine Mammal Laboratory (NMML), Alaska Fisheries Science Center (Dr. John Bengtson, Responsible Party), 7600 Sand Point Way, NE., Seattle, Washington 98115–6349, has applied in due form for a permit to conduct research on narwhals, *Monodon monoceros.*

DATES: Written, telefaxed, or e-mail comments must be received on or before January 28, 2011.

ADDRESSES: These documents are available upon written request or by appointment in the following offices:

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

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

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 e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail 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: Amy Hapeman or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

On April 27, 2010 notice (80 FR 22119) was published that NMML requests a 5-year permit to conduct research on marine mammals in the Pacific, Atlantic, Arctic, and Southern Oceans to monitor cetaceans for scientific and management purposes. NMFS is in the midst of processing this request. Due to recent changes in narwhal distribution NMML now requests as part of this application to take narwhals during aerial and vessel surveys to document sightings in North Pacific and Arctic waters and monitor their status and trends. Up to 1,000 animals would be taken annually by each survey platform for observation, monitoring, counts, photo-identification and photogrammetry. During vessel surveys researchers would opportunistically collect sloughed skin, fecal samples, and carcass remains.

An environmental assessment is being prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 22, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–32847 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA115

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) will hold a work session, which is open to the public.

DATES: The HMSMT work session will begin at 8:30 a.m. on Wednesday, January 19, 2011 and continue on Thursday, January 20, 2011, again beginning at 8:30 a.m. On both days the meeting will continue until business is completed.

ADDRESSES: The work sessions will be held at the Large Conference Room, U.S. Fish and Wildlife Offices, 6010 Hidden Valley Rd., Carlsbad, CA 92011; telephone: (760) 431–9440.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The HMSMT will discuss two topics. First, they will discuss characterization of fisheries catching North Pacific albacore tuna in preparation for developing potential management responses to a new stock assessment due to be completed in 2011. Second, the HMSMT will discuss potential improvements for categorizing and reporting landings data for west coast fisheries catching HMS. Informational topics, such as an update on Marine Recreational Information Program funded projects on the west coast, may also be discussed, time permitting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

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

Dated: December 22, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–32690 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA117

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Standing, Special Spiny Lobster and Special Reef Fish Scientific and Statistical Committees.

DATES: The meeting will convene at 1 p.m. on Tuesday, January 18, 2011 and conclude by noon on Friday, January 21, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Committee will meet to review several recently completed stock assessments and supplemental assessment analyses, and to recommend levels of acceptable biological catch. During the first day of the meeting, the Standing and Special Spiny Lobster Scientific and Statistical Committees will meet jointly to review a spiny lobster update assessment and make recommendations to the Council. The remainder of the meeting will be a joint meeting of the Standing and Special Reef Fish Scientific and Statistical Committee, which will begin upon completion of the spiny lobster portion of the meeting. The Committee will review draft terms of reference for a gray triggerfish update assessment and a vermilion snapper update assessment to be conducted in 2011. The Committee

will then review a re-run of the 2009 gag update assessment with a corrected size distribution for the recreational discard data and commercial discard estimates based on observer data. The Committee will also review the impact of applying observer based discard estimates on the 2009 red grouper update assessment. The Committee will then review the following assessments: Greater amberjack update assessment, SEDAR 15 mutton snapper benchmark assessment, and SEDAR 23 goliath grouper benchmark assessment.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 23, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–32737 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA107

New England Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of a correction to a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, January 20, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Clarion Hotel, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774–5611; fax: (207) 871–0510.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on December 23, 2010 (75 FR 80796). The notice is being republished in its entirety.

The items of discussion in the committee's agenda are as follows:

1. The Herring Oversight Committee will continue development of catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP); alternatives include management measures to:

- Adjust the fishery management program (administrative provisions, carrier vessels, transfers at sea, notification requirements, quota monitoring, reporting, and permit provisions);
- Address at-sea monitoring, observer coverage levels, address maximized retention, and maximize sampling and address net slippage;
- Address portside sampling, portside sampling program design, and measures to verify self-reported landings;

2. They will continue development of management measures and alternatives to address river herring bycatch for consideration in Amendment 5; alternatives may include identification of river herring hotpots, management alternatives to apply to those hotspots (monitoring, avoidance, protection), and/or catch caps for river herring;

3. Also on the agenda is to review/discuss available information regarding the development of management measures to protect spawning fish in Amendment 5, develop Committee recommendations;

4. They will also discuss development of alternatives to address midwater trawl vessel access to groundfish closed areas;

5. The Committee will develop recommendations for Council consideration regarding all of the management alternatives for inclusion in Amendment 5 Draft EIS (catch monitoring program, measures to address river herring bycatch, access to groundfish closed areas, protection of spawning fish); and

6. Given time other business will be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 23, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–32793 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ23

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

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

ACTION: Notice.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS hereby issues a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals from six marine mammal stocks listed under the Endangered Species Act (ESA) by participants in several groundfish

fisheries in the Bering Sea and the Gulf of Alaska. This authorization is based on determinations that mortality and serious injury of endangered stocks of Central North Pacific (CNP) humpback whales, Western North Pacific (WNP) stock of humpback whales, Northeast Pacific (NEP) stock of fin whales, North Pacific stock of sperm whales, and Western U.S. stock of Steller sea lions; and on the threatened Eastern U.S. stock of Steller sea lions incidental to commercial fishing will have a negligible impact on these stocks, that recovery plans have been developed or are being prepared, that a monitoring program is established, and that vessels in the fisheries are registered. Take Reduction Plans (TRPs) are not required for the NEP stock of fin whales or the Eastern U.S. stock of Steller sea lions because mortality and serious injury of these stocks incidental to commercial fishing operations are at insignificant levels approaching a zero mortality and serious injury rate; TRPs for other species will be deferred as sufficient funding is not available at this time.

DATES: This permit is effective for a three-year period beginning January 1, 2011.

ADDRESSES: Reference material for this permit is available on the Internet at the following address: *http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp*. Recovery plans for these species are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*.

Copies of the reference materials may also be obtained from the Protected Resources Division, NMFS, Alaska Region, Protected Resources Division, P.O. Box 21668, Juneau, AK 99802. Attention—Kaja Brix, Assistant Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Dana J. Seagars, Alaska Regional Office, (907) 271–5005, or Tom Eagle, Office of Protected Resources, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Background

MMPA section 101(a)(5)(E) requires NMFS to allow the taking of marine mammals from species or stocks listed as threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*) incidental to commercial fishing operations if NMFS determines that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On November 9, 2010 (75 FR 68767), NMFS proposed to issue a permit to incidentally take certain ESA listed marine mammal stocks by vessels registered in the following Federal and State-parallel Category II groundfish fisheries: The AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Island pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries. NMFS is now issuing a 3-year permit to participants in the above fisheries under MMPA section 101(a)(5)(E) for the incidental taking of five marine mammal stocks listed as: Endangered under the ESA—the CNP stock of humpback whales, the WNP stock of humpback whales, the NEP stock of fin whales, the North Pacific stock of sperm whales, and the Western U.S. stock of Steller sea lions, and from one stock listed as threatened—the Eastern U.S. stock of Steller sea lions.

Taking of individuals from these threatened or endangered stocks of marine mammals would be authorized only in the fisheries identified in Table 1; no other Alaska-based groundfish fisheries are known to take these or other species or stocks of threatened or endangered marine mammals. There are no Category I fisheries designated in Alaska. Participants in the seven Category III fisheries identified in this notice (Table 1) are not required to obtain such incidental take permits but are required to report injuries or mortalities of marine mammals incidental to their operations for the taking to be authorized after a Negligible Impact Determination (NID) has been made. State-parallel groundfish fisheries are included in this proposed permit. NMFS will consider issuing permits at a future date for the taking of the subject threatened or endangered species by participants in State-managed fisheries other than the State-parallel groundfish fisheries. The data for considering these authorizations were reviewed coincident with the 2011 MMPA List of Fisheries (LOF) (75 FR November 8, 2010), the draft 2010 marine mammal stock assessment reports (dSAR) (Allen and Angliss 2010), and other relevant sources.

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if the mortality and serious injury incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of an NID. NMFS issued a draft NID for the proposed action (November 9, 2010: 75 FR 68767), with minor edits, NMFS now issues a final document (*http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp).*

Determinations for the Permit

The following determinations and supporting information were included in notice of the proposed permit (75 FR 68767, November 9, 2010).

Negligible Impact

NMFS previously issued an NID for CNP humpback whales (75 FR 29984, May 28, 2010) addressing taking in both Alaska and Hawaiian waters; the conclusions reached in that document remain valid. In addition, relevant information was reviewed in the NID issued for this permit. Based on that review NMFS has estimated that mortality and serious injury of CNP humpback whales incidental to commercial fishing operations in HI and AK totals 3.8 whales per year, which is 6.2 percent of the stock's Potential Biological Removal (PBR) level. NMFS concludes that incidental mortality and serious injury at this total rate will have a negligible impact on CNP humpback whales. Although humpback whales are taken incidental to fisheries in Hawaiian and Alaskan waters, this permit is limited to the Alaska-based fisheries because such taking was previously permitted for the Hawaii-based fisheries (75 FR 29984, May 28, 2010).

NMFS estimated that mortality and serious injury of WNP humpback whales incidental to commercial fishing operations in AK at 0.2 whales per year, which is 10.0 percent of the stock's PBR level. NMFS concludes that incidental mortality and serious injury at this total rate will have a negligible impact on WNP humpback whales.

NMFS estimated that mortality and serious injury of NEP fin whales incidental to commercial fishing operations in AK at 0.23 whales per year and 0.20 whales per year due to ship strikes. Thus the total annual human-related mortality of NEP fin whales is 0.43 whales per year which is less than 10.0 percent of the stock's PBR level. NMFS concluded that incidental mortality and serious injury at this total rate will have a negligible impact on NEP fin whales.

While reliable estimates for the abundance and trends of sperm whales are not currently available, NMFS assessed the impact of the incidental

take by first determining the estimated annual mortality of sperm whales (3.5 whales per year in AK plus 0.2 whales per year in CA/OR/WA for a total of 3.7 whales per year) in commercial fisheries and then re-arranging the formula used to calculate PBR to estimate the number of sperm whales that would be required for 3.7 animals to be 10 percent of the stock's PBR (taking at or below this would be considered negligible). Solving for the minimum abundance estimate gives a minimum abundance of 18,500 sperm whales. Because the best estimate of sperm whale abundance in the North Pacific (39,200) is far greater than this calculated threshold minimum abundance, the NMFS concludes that the current level of human-caused mortality and serious injury is less than 10 percent of a PBR for sperm whales in the eastern North Pacific Ocean; therefore, such taking will have a negligible impact on the stock.

Total human related mortality and serious injury of the Western U.S. stock of Steller sea lions is estimated at 223.8 animals per year, greater than 10 percent of PBR (set at 254 animals). Following NID Criterion 3, NMFS has determined that mortality and serious injuries of Western U.S. stock Steller sea lions incidental to commercial fishing will have a negligible impact on the stock because population growth is stable or increasing at a (non-significant) 1.5 percent annual rate and the fishery-related mortalities and serious injuries (26.2) are less than PBR (254).

The minimum estimated mortality and serious injury rate incidental to commercial fisheries (both U.S. and Canadian) is 25.6 Eastern U.S. stock Steller sea lions per year. With 15.1 animals estimated taken due to other human related sources, the total human related mortality is less than 10 percent of this stock's PBR (2,378 animals). Therefore, NMFS has determined that the annual mortality and serious injury incidental to commercial fisheries will have a negligible impact on the Eastern U.S. stock of Steller sea lions.

Recovery Plans

Recovery Plans for both stocks of humpback whales and Steller sea lions have been completed. Recovery plans for fin and sperm whales have been drafted and are being completed. These draft and final recovery plans are available on the Internet (*see* **ADDRESSES**). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

Monitoring Program

MMPA section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. Participants in the Alaska groundfish fisheries are required to hold a permit under 50 CFR 665.21. The MMPA registration program has been integrated in this permitting system for the Alaska-based groundfish fisheries. Accordingly, vessels in the fisheries are registered in accordance with MMPA section 118 and a monitoring program is in place.

Take Reduction Plans

Subject to available funding, MMPA section 118 requires a TRP in cases where a strategic stock interacts with a Category I or II fishery. The stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as threatened or endangered under the ESA. These strategic stocks interact with the Category II fisheries described above, and no TRPs have been developed for them. The short-term goal of a TRP is to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR. The short-term goal for TRPs has been realized for each of these stocks of marine mammals. The long-term goal of a TRP is to reduce incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. Development and implementation of TRPs are subject to the availability of funding. MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing and implementing TRPs.

NMFS has insufficient funding available to simultaneously develop and implement TRPs for all stocks that interact with Category I or Category II fisheries. Most recently in March 2009, NMFS considered multiple quantitative and qualitative factors to identify its priorities for establishing take reduction teams (TRTs) and collecting data. As provided in MMPA sections 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the WNP and CNP stocks of humpback whale, the North Pacific stock of sperm whales, and the Western U.S. stock of Steller sea lions as "low" priorities for establishing TRTs, based on population trends of each stock and mortality and serious injury levels incidental to commercial fisheries that are below the stocks' PBRs. Accordingly, given these factors and NMFS' prioritization process, TRPs will be deferred under section 118 as other stocks have a higher priority for any available funding for establishing new TRPs.

Mortality and serious injury of Steller sea lions, Eastern U.S. stock, and NEP fin whales incidental to commercial fisheries are at an insignificant levels, approaching a zero mortality and serious injury rate (Allen and Angliss, 2010). MMPA section 118(b)(2) states that fisheries maintaining such mortality and serious injury levels are not required to further reduce their mortality and serious injury rates. Because the goals of TRPs are to reduce mortality and serious injury of marine mammals incidental to commercial fishing operations, no TRPs are required for either of these stocks.

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. Operations of the Bering Sea/Aleutian Islands, Gulf of Alaska, and Alaska State Parallel groundfish fisheries have been analyzed previously under NEPA for Federal actions authorizing the operations of the fisheries. The most recent analysis of the impacts of authorizing these fisheries on the human environment was contained in an Environmental Assessment ("Revisions to the Steller Sea Lion Protection Measures for the Aleutian Islands Atka Mackerel and Pacific Cod Fisheries," completed in November 2010). This EA, which included a finding of no significant impact on the human environment, followed a Programmatic Supplemental Environmental Impact Statement on Alaska groundfish fisheries in 2004, and an Environmental Impact Statement (EIS) on specifications for Alaska groundfish fisheries in 2007. Issuing this permit to authorize the taking of threatened or endangered species does not modify the operation of the affected fisheries nor does it alter the impact of these fisheries on the human environment. Because the effects of the fisheries have already been analyzed as noted above, no additional analyses under NEPA are required.

Section 7 of the ESA requires NMFS to consult with itself when agency actions may affect threatened or endangered marine species, including marine mammals. NMFS has evaluated the direct and indirect effects of the Alaska-based groundfish fishery in a recently issued (November 24, 2010) BiOp. NMFS reviewed this BiOp and

information related to issuing the permit and have concluded that issuing the permit would not modify the activities of the fishery nor the effects of these fishing activities on the subject ESA-listed species in a manner that would cause adverse effects not previously evaluated and that there has been no new listing of species or designation of critical habitat that could be affected by the action. Accordingly, no additional analyses under the ESA are required at this time.

Current Permit

NMFS has made determinations under MMPA section 101(a)(5)(E) that (1) mortality and serious injury of CNP and WNP humpback whales, NEP fin whales, North Pacific sperm whales, Western U.S. Steller sea lions, and Eastern U.S. Steller sea lions incidental to commercial fishing will have a negligible impact on these stocks, (2) recovery plans for all affected species or stocks have been completed or are currently in process, (3) as required by MMPA section 118, a monitoring program has been established for the Alaska groundfish fisheries, and vessels in the fishery are registered, and (4) NMFS has insufficient funds to complete TRPs for the two stocks of humpback whales, for the North Pacific stock of sperm whales, and for the Western U.S. stock of Steller sea lions. Take Reduction Plans (TRPs) are not required for the NEP stock of fin whales or the Eastern U.S. stock of Steller sea lions because mortality and serious injury of these stocks incidental to commercial fishing operations are at insignificant levels approaching a zero mortality and serious injury rate.

Therefore, NMFS has determined that all the requirements have been met for issuing a permit to participants in the following Federally-authorized and State-parallel Category II groundfish fisheries: The AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Island pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries. Accordingly, NMFS issues a permit to participants in these Category II fisheries for the taking of CNP humpback whales, WNP humpback whales, NEP fin whales, North Pacific sperm whales, and Steller sea lions (Western U.S. stock and Eastern U.S. stock) incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fishery. For incidental taking of marine mammals to be authorized in Category III fisheries, any injuries or mortalities must be reported to NMFS. If NMFS determines at a later date that incidental mortality and serious injury from commercial fishing is having more than a negligible impact on these six stocks of listed marine mammals, NMFS may use its emergency authority under MMPA section 118 to protect the stock and may modify the permit issued herein.

MMPA section 101(a)(5)(E) requires NMFS to publish in the **Federal Register** a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was published May 28, 2010 (75 FR 29984), which authorized the taking of threatened or endangered marine mammals incidental to commercial fishing in Hawaii. With issuance of the current permit, NMFS adds 4 category II fisheries (AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Island pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries) and seven category III Alaska fisheries to this list (Table 1).

TABLE 1—LIST OF FISHERIES AUTHORIZED TO TAKE THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO FISHING OPERATIONS

Fishery	Category	Marine mammal stock
HI deep-set (tuna target) longline/set line	I	Humpback whale, CNP stock.
Hi shallow-set (swordfish target) longline/set line	II	Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands flatfish trawl	II	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Island pollock trawl	II	Fin whale, NEP stock. Steller sea lion, Western stock.
AK Bering Sea sablefish pot	II	Humpback whale, WNP stock. Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands Pacific cod longline fisheries	II	Steller sea lion, Western stock.
AK miscellaneous finfish set gillnet	III	Steller sea lion, Western stock.
AK Gulf of Alaska sablefish longline	III	Sperm whale, NP. Steller sea lion, Eastern stock.
AK halibut longline/set line (State and Federal waters)	III	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Atka mackerel trawl	III	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Pacific cod trawl	III	Steller sea lion, Western stock.
AK Gulf of Alaska Pacific cod trawl	III	Steller sea lion, Western stock.
AK Gulf of Alaska pollock trawl	III	Fin whale, NEP stock. Steller sea lion, Western stock.

Comments and Responses

In response to the notice of proposed permit issuance (75 FR 68767, November 9, 2010), NMFS received letters containing comments from two organizations, the U.S. Marine Mammal Commission (Commission) and the Marine Conservation Alliance (MCA). Each letter contained multiple comments.

Comment 1: The Commission and the MCA briefly summarized NMFS' findings for the proposed permit and recommended that NMFS comply with MMPA section 101(a)(5)(E) by issuing the permit to authorize the incidental take of endangered stocks of CNP and WNP humpback whales, ENP fin whales, NP sperm whales, Western U.S. stock of Steller sea lions, and the threatened Eastern U.S. stock of Steller sea lions.

Response: NMFS agrees and is issuing the permit as required by the MMPA.

Comment 2: The Commission recommended that NMFS emphasize research and monitoring programs to address uncertainties related to reproduction and survival of the far-western sub-populations of the Western U.S. stock of Steller sea lions and re-evaluate the negligible impact determination as new information becomes available.

Response: NMFS agrees additional research and monitoring programs

would clarify uncertainties and to re-evaluate the findings in this notice as new information becomes available. In particular, NMFS will incorporate an annual review of any reports of incidental mortality of the subject listed species in the fisheries addressed by this permit. Particular attention will be paid to instances of incidental take of Western stock Steller sea lions in those sub-regions experiencing continued population declines (NMFS Fishery Statistical Areas 541, 542, and 543) to ensure the level of taking remains negligible on a local scale.

Comment 3: The Commission recommended NMFS work with state and tribal fisheries managers and participants in those fisheries to expand observer coverage in fisheries that may take marine mammals and, as observers provide better data, re-evaluate the negligible impact determination.

Response: In the NID, NMFS recognized that certain fisheries may have not been observed, have been only observed for a limited number of seasons, or were covered over a decade or longer ago. NMFS agrees that there is a pressing need for new and sound data, in particular for certain fisheries known to have taken marine mammals at some previous point (e.g., Prince William Sound salmon drift gillnet fishery) and will undertake new monitoring programs as budgetary constraints and priorities allow. NMFS has also recently taken steps to expand observer coverage in previously unmonitored groundfish fisheries in nearshore areas and in smaller boat fisheries (*e.g.,* < 60 foot vessels). However, the implementation date for such an expanded program and the initial proportion of coverage are uncertain at this time. As any new data from observer programs become available, NMFS will re-evaluate the NID for all species, as appropriate.

Comment 4: The Commission recommended NMFS identify information gaps related to endangered and threatened species that may be affected by the issuance of this permit and elevate the priority given to addressing those gaps, in particular to the possible affect of this action on critically endangered marine mammals such as the North Pacific right whale.

Response: NMFS will continue to evaluate available data such as that obtained through the existing Groundfish Fishery Observer Program that may provide information relevant to a relationship among this action, ongoing Alaska groundfish fishing activities, and critically endangered marine mammal species and stocks. Research and management programs for listed species will continue to be a high priority for NMFS and will be expanded to the extent that future budgets allow.

Comment 5: In their review of the draft NID, MCA called attention to information discussed in the NID concerning possible changes in, or "blurring at the edges," of the geographic boundary (144°W) between the Western U.S. and Eastern U.S. stocks of Steller sea lions and referred to their additional comments on that topic submitted as part of NMFS's ongoing five-year status review of the Eastern U.S. stock.

Response: There is adequate information to continue to manage these stocks as defined based on extensive prior scientific review as well as new information (*e.g.,* Phillips, C.D., J.W. Bickham, J.C. Patton, and T.S. Gelatt. 2009. Systematics of Steller sea lions (*Eumetopias jubatus*): Subspecies recognition based on concordance of genetics and morphometrics. Occas. Pap. Mus. Texas Tech Univ. 283:1–15). Additional information and a response to those comments will be forthcoming through the public review process appropriate to the five year status review.

Comment 6: The MCA opined the Draft NID did not incorporate the most up-to-date Western U.S. Steller sea lion population assessment data nor called attention to the relationship between current population trends and various Recovery Plan criteria, alleging the population is "on track" towards downlisting from endangered to threatened.

Response: NMFS has used the best available scientific information which is complete at this time for preparing and issuing the NID. Data analysis and final report preparation for population surveys of Steller sea lions conducted in 2009 and 2010 remain in process. NMFS staff conferred and reached a preliminary conclusion that these data are not likely to result in any substantial alteration of the conclusions reached in the NID. The criteria for recovery and ultimate "downlisting" of the Western U.S. stock are clearly stated in the Recovery Plan (NMFS 2008) and are based on (among a variety of factors) maintaining a statistically significant consistent but slow (e.g., 1.5 percent) increasing trend of population growth for 15 years on average. Clearly, given the lack of any long-term statistical certainty in available population assessment data as well as the disparate trends within the various sub-regions as defined in the Recovery Plan, it is premature to make a statement as to whether the population is or is not "on track" with respect to recovery and delisting; furthermore, such a determination is not relevant to the NID process. The NID uses the appropriate criteria and utilized the best available population information to determine that the effect of authorizing the incidental take of commercial groundfish fishing will have a negligible impact on the Western U.S. population stock of Steller sea lions. In addition, whether or not the status of any of these species may change under the ESA is not relevant to the NID under the MMPA. If such a change in status occurs, NMFS would evaluate whether or not additional analyses for this permit are necessary.

Comment 7: The MCA inquired about how not convening a TRP might potentially affect recovery of the Western U.S. stock and whether or not funding is likely to be included in the FY2012/13 budgets.

Response: As discussed in the notice of the proposed permit, the current levels of incidental mortality and serious injury (without a TRP) are expected to delay recovery of the Western U.S. stock of Steller sea lions by no more than 10 percent of the time to recovery if such mortality and serious injury did not occur. However, NMFS plans, through both monitoring of this permit, and actions required through the section 7 process of the ESA—the Reasonable and Prudent Alternatives issued with the Final BiOp for the subject groundfish fisheries—to assess the level of taking and to work with industry, the North Pacific Fisheries Management Council, and other groups to ensure that any such taking remains at negligible levels. NMFS will continue to assess the need for any TRPs and associated budgetary needs within the priorities of the agency.

Dated: December 21, 2010.

P. Michael Payne,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–32689 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for a new collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Global Intellectual Property Academy (GIPA) Surveys.

Form Number(s): None.

Agency Approval Number: 0651–00xx.

Type of Request: New information collection.

Burden: 375 hours annually.

Number of Respondents: 1,500 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take participants of the GIPA training programs 15 minutes (0.25 hours) to complete the surveys. This includes the time to gather the necessary information, complete the survey, and submit the completed survey to the USPTO.

Needs and Uses: The pre-program, post-program, and alumni surveys will be used to obtain feedback from the participants of the various GIPA training classes. The pre-program surveys allow participants to provide feedback on the program expectations and training needs immediately prior to participating in the GIPA training programs. The post-program surveys allow participants to provide feedback on program effectiveness, service, facilities, teaching practices, and processes immediately after completing the GIPA training programs. The alumni surveys allow participants to provide feedback on program effectiveness approximately one year after completing the GIPA training programs.

The USPTO will use the data collected from the surveys to evaluate the percentage of foreign officials trained by GIPA who have initiated or implemented a positive intellectual property change in their organization and to evaluate the percentage of foreign officials trained by GIPA who increased their expertise in intellectual property. The data will also be used to evaluate the satisfaction of the participants with the intellectual property program and the value of the experience as it relates to future job performance. The USPTO also uses the survey data to meet organizational performance and accountability goals.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A_Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

• *E-mail: InformationCollection@uspto.gov.* Include "0651–00xx Global Intellectual Property Academy (GIPA) Surveys copy request" in the subject line of the message.

• *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before January 28, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: December 23, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–32738 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Order.

SUMMARY: On November 10, 2010, the Commodity Futures Trading Commission ("CFTC" or the "Commission") published for public comment in the **Federal Register** a proposal to exempt the trading and clearing of certain options ("Options") on the CBOE Gold ETF Volatility Index ("GVZ Index"), which would be traded on the Chicago Board Options Exchange ("CBOE"), a national securities exchange, and cleared through the Options Clearing Corporation ("OCC") in its capacity as a registered securities clearing agency, from the provisions of the Commodity Exchange Act ("CEA") and the regulations thereunder, to the extent necessary to permit such Options to be so traded and cleared. The Commission also requested comment regarding whether it should provide a categorical exemption that would permit the trading and clearing of options on indexes that measure the volatility of shares of gold exchange-traded funds ("ETFs") generally, regardless of issuer, including options on any index that measures the magnitude of changes in, and is composed of the price(s) of shares of one or more gold ETFs and the price(s) of any other instrument(s), which other instruments are securities as defined in the Securities Exchange Act of 1934 ("the '34 Act"). The Commission has determined to issue this Order essentially as proposed. Authority for these exemptions is found in § 4(c) of the CEA.

DATES: *Effective Date:* December 23, 2010.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581, or Anne C. Polaski, Special Counsel, 312–596–0575, *apolaski@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, Illinois 60661.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC is both a Derivatives Clearing Organization ("DCO") registered pursuant to § 5b of the CEA,[1] and a securities clearing agency registered pursuant to § 17A of the '34 Act.[2]

OCC has filed with the CFTC, pursuant to § 5c(c) of the CEA and §§ 39.4(a) and 40.5 of the Commission's regulations thereunder,[3] a request for approval of a rule that would enable OCC to clear and settle options on the GVZ Index traded on the CBOE, a national securities exchange, in its capacity as a registered securities clearing agency (and not in its capacity as a DCO).[4] Section 5c(c)(3) of the CEA provides that the CFTC must approve such a rule submitted for approval unless it finds that the rule would violate the CEA.

The GVZ Index is an index that measures the implied volatility of options on shares of the SPDR® Gold Trust ("SPDR® Gold Trust Shares"), an ETF designed to reflect the performance of the price of gold bullion.[5]

[1] 7 U.S.C. 7a–1.

[2] 15 U.S.C. 78q–l.

[3] 7 U.S.C. 7a–2(c), 17 CFR 39.4(a), 40.5.

[4] *See* Securities Exchange Act Release No. 62094 (May 13, 2010), 75 FR 28085 (May 19, 2010) (File No. SR–OCC–2010–07 filed with both the CFTC and the Securities and Exchange Commission ("SEC")) and the SEC's approval in Securities Exchange Act Release No. 62290 (June 14, 2010), 75 FR 35861 (June 23, 2010). *See also* Securities Exchange Act Release No. 62139 (May 19, 2010), 75 FR 29597 (May 26, 2010) (SEC approval of the CBOE's listing and trading of Options on the GVZ Index).

[5] *See* Securities Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614 (Nov. 5, 2004) (original

Continued

The Commission has proposed to permit OCC to clear and settle options on indexes that measure the volatility of shares of gold ETFs generally, regardless of issuer, that are traded on national securities exchanges, in OCC's capacity as a registered securities clearing agency (and not in its capacity as a DCO). Such options could include options on any index that measures the magnitude of changes in, and is composed of the price(s) of shares of one or more gold ETFs and the price(s) of any other instrument(s), which other instruments are securities as defined in the '34 Act.

II. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA empowers the CFTC to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[6] The Commission may grant such an exemption by rule, regulation or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c) does not require the Commission to determine the jurisdictional status of the Options on the GVZ Index or other options on indexes that measure the volatility of shares of gold ETFs. In enacting § 4(c), Congress noted that the goal of the provision "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner." [7] The Commission believes that permitting Options on the GVZ Index and other options on indexes that measure the volatility of shares of gold ETFs to be traded on a national securities exchange, and to be cleared by OCC in its capacity as a securities clearing agency, as discussed above, may foster both financial innovation and competition.

The Options on the GVZ Index and other options on indexes that measure the volatility of shares of gold ETFs, described above, are novel instruments. Given, among other things, the fact that the Commission has provided exemptions for options on shares of gold ETFs on prior occasions,[8] the Commission believes that this is an appropriate case for issuing an exemption without issuing a finding as to the nature of these particular instruments.

Section 4(c)(2) of the CEA provides that the Commission may grant exemptions only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or Commission-regulated markets to discharge their regulatory or self-regulatory responsibilities under the CEA.[9]

In the November 10, 2010 **Federal Register** release,[10] the CFTC requested comment as to whether this exemption from the requirements of the CEA and regulations thereunder should be granted in the context of these transactions. Seven comments were received, including comments from OCC and CBOE, which supported the exemption [11] and five from private citizens.[12]

III. Findings and Conclusions

After considering the complete record in this matter, the Commission has determined that the requirements of § 4(c) have been met. First, the exemption is consistent with the public interest and with the purposes of the CEA, including "promot[ing] responsible innovation and fair competition among boards of trade, other markets and market participants." [13] It appears consistent with these and the other purposes of the CEA, and with the public interest, for the mode of trading and clearing Options on the GVZ Index, as well as other options on indexes that measure the volatility of shares of gold ETFs, whether the mode applicable to options on securities indexes or on commodities indexes, to be determined by competitive market forces.

Second, Options on the GVZ Index and other options on indexes that measure the volatility of shares of gold ETFs will be entered into solely between appropriate persons. Section 4(c)(3) of the CEA includes within the term "appropriate persons" a number of specified categories of persons, and also in subparagraph (K) thereof "such other persons that the Commission determines to be appropriate in light of * * * the applicability of appropriate regulatory protections." [14] National securities exchanges and OCC, as well as their members who will intermediate Options on the GVZ Index and other

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Approval Order for listing and trading shares of the streetTRACKs® Gold Trust (renamed the SPDR® Gold Trust on May 20, 2008) on the New York Stock Exchange, Inc.).

[6] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

[7] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 ("4(c) Conf. Report").

[8] *See* Order Exempting the Trading and Clearing of Certain Products Related to SPDR® Gold Trust Shares, 73 FR 31981 (June 5, 2008), Order Exempting the Trading and Clearing of Certain Products Related to iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares, 73 FR 79830 (Dec. 30, 2008), and Order Exempting the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares, 75 FR 37406 (June 29, 2010) (collectively, the "Previous Orders").

[9] Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[10] 75 FR 69058 (Nov. 10, 2010).

[11] OCC and CBOE express the belief that the exemption, while somewhat helpful, does not go far enough, because, in the opinion of each of them, all options on ETFs are securities.

[12] None of the comments from private citizens discussed the GVZ index, gold ETFs, the volatility of shares of gold ETFs, or otherwise addressed the merits of this exemption. Each of the seven comments is available on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=896.*

[13] 7 U.S.C. 5(b). *See also* 7 U.S.C. 6(c)(1) (purpose of exemptions is "to promote responsible economic or financial innovation and fair competition.").

[14] 7 U.S.C. 6(c)(3).

options on indexes that measure the volatility of shares of gold ETFs are subject to extensive and detailed regulation by the SEC under the '34 Act. Given such regulatory protections, the Commission has determined that all persons trading Options on the GVZ Index and other options on indexes that measure the volatility of shares of gold ETFs on a national securities exchange, and clearing such products through OCC in its capacity as a securities clearing agency, are appropriate persons.

Third, the grant of this exemption would not have a material adverse effect on the ability of the Commission or any Commission-regulated market to carry out their regulatory responsibilities under the CEA.[15]

Therefore, upon due consideration, pursuant to its authority under § 4(c) of the CEA, the Commission hereby issues this Order and exempts the trading of the following products on national securities exchanges, and the clearing of all such products through the Options Clearing Corporation ("OCC") in its capacity as a registered securities clearing agency, from the provisions of the CEA and the regulations thereunder, to the extent necessary to permit such products to be so traded and cleared:

(a) Options on the GVZ Index;

(b) Options on any index that measures the volatility (historical or expected) of the price(s) of shares of one or more gold ETFs; and

(c) Options on any index that measures the volatility (historical or expected) of price(s) of shares of one or more gold ETFs and the price(s) of any other instrument(s), which other instruments are securities as defined in § 3(a)(10) of the '34 Act.[16]

This Order is subject to termination or revision, on a prospective basis, if the Commission determines upon further information that this exemption is not consistent with the public interest. If the Commission believes such exemption becomes detrimental to the public interest, the Commission may revoke this Order on its own motion.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[17] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed exemptive order would not, if approved, require a new collection of information from any entities that would be subject to the proposed order.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[18] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, § 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its action.

Section 15(a) of the CEA further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The Commission has considered the costs and benefits of the order in light of the specific provisions of § 15(a) of the CEA. The Commission has determined that the costs of this order are not significant. Although the order exempts the subject options from regulation under the CEA, market participants and the public will nonetheless be protected because the national securities exchanges on which they trade, and the intermediaries through which they will be traded will be subject to comprehensive regulation by the SEC. The Commission has determined that the benefits of the order are substantial. The order will promote efficiency in the markets, as it will provide certainty that the subject options will not be subject to duplicative regulation.

The Commission requested comment on its application of these factors in the proposing release. No such comments were received.

After considering the costs and benefits, the Commission has determined to issue this order.

Issued in Washington, DC, on December 23, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–32812 Filed 12–28–10; 8:45 am]

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[15] As noted in the proposing release, 75 FR at 69059, on September 24, 2010, the Commission has also issued a Request for Comment on Options for a Proposed Exemptive Order Relating to the Trading and Clearing of Precious Metal Commodity-Based ETFs and a Concept Release, 75 FR 60411 (September 30, 2010) ("Precious Metal ETF Release"). In the Precious Metal ETF Release, the Commission requested comment, in part, regarding whether it should issue a categorical Section 4(c) exemption to permit options and futures on shares of all or some precious metal commodity-based ETFs to be traded and cleared as options on securities and security futures, respectively. The comment period for the Precious Metal ETF Release expired on November 1, 2010; eight comments were received.

The Commission will use its authority under Section 4(c) of the CEA to exempt options on *indexes* that measure the volatility of shares of gold ETFs at this time while it continues to consider the appropriateness of a categorical exemption with respect to options and futures on shares of precious metal commodity-based ETFs. The Commission concludes that options on an index that measures commodity price volatility based on shares of such an ETF do not raise the same regulatory concerns that may be associated with options and futures on shares of an ETF that is based on the underlying commodity. In this regard, trading in options and futures on shares of a gold ETF could have a potential impact on the deliverable supply by removing physical gold from physical marketing channels, and thus may impact the gold futures price. An index based on volatility measures does not raise these concerns in that such an index does not involve ownership of the commodity, either directly or indirectly, by traders in options on such an index, and thus options on such index would not have a direct impact on deliverable supplies or the pricing of gold in the cash market.

[16] 15 U.S.C. 78c(a)(10).

[17] 44 U.S.C. 3507(d).

[18] 7 U.S.C. 19(a).

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Notice of Funding Opportunity (NOFO) for Social Innovation Fund 2011 Awards; Request for Feedback

AGENCY: Corporation for National and Community Service (the Corporation).

ACTION: Request for Feedback on the Corporation's Fiscal Year (FY) 2011 Notice of Funding Opportunity (NOFO) for Social Innovation Fund Awards.

SUMMARY: The Corporation for National and Community Service (CNCS) is releasing a draft of the Notice of Funding Opportunity (NOFO) for the 2011 Social Innovation Fund competition. This release will initiate a public input period that will extend until January 21, 2011.

The Social Innovation Fund is an innovative program that awards grants to and works with existing grantmaking institutions, referred to in the *Notice* as "intermediaries," to direct resources to innovative community-based nonprofit organizations that will identify and grow promising programs with

preliminary evidence of effectiveness. These programs will address challenges facing local communities in three priority issue areas:

- Youth Development;
- Economic Opportunity; and
- Healthy Futures

This public input process reinforces the commitment of CNCS to maintain the high standard of transparency and openness the Social Innovation Fund demonstrated in its initial year (2010). An open process is also critical to ensure that, moving forward, the Social Innovation Fund is able to select the high quality of grantees required to advance its mission—significantly and sustainably improving the lives of people in low-income communities throughout the U.S.

CNCS has built on the lessons from the 2010 Social Innovation Fund competition, and is proposing several changes from last year's process that are reflected in the draft 2011 document:

- The Social Innovation Fund is taking additional steps towards transparency consistent with CNCS's commitment to transparency. The NOFO indicates that CNCS plans to release the names and executive summaries of all applications considered for funding, the names of all expert reviewers, and the reviewer comments for all selected grantees. The public comment period will allow us to gauge the sector's thoughts on this issue.
- To expand the number of intermediaries able to participate in the Social Innovation Fund, we have decreased the maximum dollar amount for which intermediaries can apply from $10 million to $7 million. The minimum level will remain at $1 million.
- To stimulate the identification of additional high-impact community-based organizations throughout the U.S., intermediaries will not be permitted to include pre-selected subgrantees in their applications. All intermediary applicants will select all of their subgrantees through open, competitive processes initiated after receipt of their award.
- CNCS has streamlined and clarified the overall content of the NOFO to make it easier for organizations to apply. Particularly we have clarified the eligibility criteria, consolidated guidelines for narrative content, and added information about the review process.

CNCS is soliciting public input on the proposed Social Innovation Fund NOFO. As appropriate, the feedback received will be taken into account in the final NOFA. (CNCS will not provide individual responses to feedback received.)

DATES: *Feedback Due Date:* January 21, 2011.

ADDRESSES: You may submit feedback by any of the following methods:

(1) *Electronically through the Corporation's e-mail address system: SIFinput@cns.gov*.

(2) *By mail sent to:* Corporation for National and Community Service, Attention: Kirsten Breckinridge, Room 10708A; 1201 New York Avenue, NW., Washington, DC 20525.

(3) *By hand delivery or by courier to:* The Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(4) *By fax to:* (202) 606–3466, Attention: Kirsten Breckinridge, SIF Docket Manager.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific SIF program requirements should be directed to Kirsten Breckinridge by e-mail at *SIFinput@cns.gov*. Persons with hearing or speech impairments may contact CNCS via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Overview Information

A. *Federal Agency Name:* Corporation for National and Community Service.

B. *Funding Opportunity Title:* Social Innovation Fund.

C. *Announcement Type:* Initial announcement.

D. *Funding Opportunity Number:* OMB Approval Numbers applicable to this NOFA are 3045–0129.

E. *Catalog of Federal Domestic Assistance (CFDA) Number(s):* 94.019.

F. *Dates:*

1. *Application Receipt Requirements and Date:* CNCS is not currently accepting applications for this assistance.

2. *Estimated Award Date.* The estimated award date will be included in the final NOFA published by CNCS.

G. *Additional Important Overview Information:*

1. CNCS is specifically seeking feedback on the changes that have been made to the 2011 Social Innovation Fund Notice of Funding Opportunity that are intended to clarify the Social Innovation Fund transparency practices, as well as the review and selection processes from the 2010 NOFA. We also welcome feedback on changes to the *Notice* format.

- CNCS is specifically inviting feedback on the outlined transparency practices and description of the review and selection process. CNCS is interested in whether the process and policies outlined reflect our intention to make public the processes behind grant selection and if not, how they can be changed to do so.
- The Corporation has changed two policies within the 2010 *Notice* regarding the allowability of pre-selected subgrantees and the range of grant award that may be requested by an applicant. The Corporation is interested in public feedback on these two changes and the implications for potential applicant programming.
- The format of the Notice of Funding Opportunity has been changed from the 2010 NOFO to provide streamlined application narrative instructions and to more clearly delineate the eligibility criteria and the selection criteria. These changes are mostly contained within sections II, IV, and V. The Corporation is specifically inviting feedback on whether these changes improve the clarity of the eligibility and review criteria and whether the narrative instructions are clearly laid forth.

2. *Application materials.* The NOFA and application materials will be available for download via the Corporation's Web site at *http://www.nationalservice.gov/about/programs/innovation.asp*.

Full Text of Announcement

Overview

This Notice of Funding Opportunity (*Notice*) announces the opportunity (pending the availability of appropriations) to apply for fiscal year 2011 awards from the Social Innovation Fund. The Social Innovation Fund is administered by the Corporation for National and Community Service (CNCS), whose mission is to improve lives, strengthen communities, and foster civic participation through service and volunteering. As the nation's largest grantmaker for service and volunteering, CNCS plays a critical role in building the capacity of America's nonprofit sector and expanding the reach and impact of volunteers in addressing pressing community challenges. Last fiscal year, CNCS engaged an estimated 5.5 million Americans in service, the largest total in its history. CNCS's core programs are AmeriCorps, Learn and Serve America and Senior Corps.

Created by the Edward M. Kennedy Serve America Act of 2009, the Social Innovation Fund is itself an innovative program that awards grants to and works with existing grantmaking institutions, referred to in this *Notice* as "intermediaries," to direct resources to innovative community-based nonprofit

organizations to identify, validate, and grow promising approaches to challenges facing local communities in three priority issue areas:

- Youth Development;
- Economic Opportunity; and
- Healthy Futures

The true innovation behind the Social Innovation Fund stems from the combination of three major elements: (1) Its focus on developing, strengthening, and then replicating and expanding community solutions that deliver results, (2) its operating model, which represents a new way of doing business for the Federal government, and (3) its support of supplementary initiatives intended to leverage the grant program and benefit the broader social innovation field.

With respect to validating and growing promising approaches, the Social Innovation Fund embraces a belief that many compelling solutions to the persistent problems of low-income communities have already been developed and successfully implemented, albeit on a limited scale, by social entrepreneurs and nonprofit organizations working in those very communities, who have a deep understanding of the problems and bring passion and fresh, practical thinking to the challenge of solving them. Accordingly, the Social Innovation Fund aims to identify those community-based organizations with the greatest potential for generating increased impact, help them strengthen their evidence base, and proactively support the growth of their work in order to significantly improve the lives of more people in more low-income communities.

With respect to its operating model, the Social Innovation Fund's approach to investing in promising community solutions is characterized by several elements that are explicitly designed to increase the effectiveness and sustainability of the program's work while maximizing the impact generated per unit of public money invested. These elements include: (1) Reliance on intermediaries with strong skills and track records of success to do the critical work of selecting, validating, and growing high-impact nonprofit organizations; (2) requirements that each Federal dollar granted by the Social Innovation Fund be matched 1:1 by the grantees and again by subgrantees with money from private and other non-Federal sources, (3) strict accountability for the achievement of impact and outcomes rather than for activities and outputs; and (4) requirements for systematic evaluation of program performance and results at all three critical levels: the service-providing nonprofit organizations, the intermediaries and the Social Innovation Fund itself.

Last year, the Social Innovation Fund competitively selected 11 intermediaries with exemplary track records of success at identifying, supporting and growing promising approaches to critical community challenges. To learn more about last year's grantees and to read their full applications to CNCS, please visit: *http://www.nationalservice.gov/about/programs/innovation.asp*.

CNCS embraces the Obama Administration's emphasis on open government and is moving toward greater openness and transparency in grantmaking. Last year, the Social Innovation fund took an unprecedented step in this direction by making available the names of expert reviewers, the names of applicants who were considered for funding, and the full applications and review comments for the selected grantees.

For the 2011 Social Innovation Fund competition, CNCS has described the application review process stage by stage (*see* section V of this *Notice*). The following information will be provided to the public (except for any information which is clearly protected by law) within 90 days of announcing the selected grantees:

- Names of expert reviewers.
- List of all applicants considered for funding.
- Executive summaries of all applications considered for funding.
- The applications of selected grantees.
- External reviewer comments for the selected grantees.

I. Funding Opportunity Description

A. What is the purpose of the Social Innovation Fund?

The purpose of the Social Innovation Fund is to improve the lives of people in low-income communities throughout the United States by increasing the impact and scale of innovative community-based approaches that deliver results in three critical areas, youth development, economic opportunity and healthy futures. To this end, the Social Innovation Fund is a vehicle to: (1) Promote public and private investment in community-based nonprofit organizations with promising approaches to critical challenges to validate their impact and replicate and expand to serve more communities (2) through the use of appropriate evidence, identify additional effective approaches to addressing critical community challenges and broadly share this knowledge; and (3) develop the grantmaking infrastructure necessary to support the work of social innovation in communities across the country.

As relates to the Social Innovation Fund, "social innovation" is understood to be the development and eventual scaling of promising and potentially transformative community-based approaches that solve critical problems. An approach is "transformative" if it not only produces strong impact (as defined in this *Notice*), but also (1) has the potential to affect how the same challenge is addressed in other communities, (2) addresses more than one critical community challenge concurrently, or (3) produces significant cost savings through gains in efficiency.

Although the practice of social innovation requires the invention and testing of new ideas, the Social Innovation Fund is not intended to fulfill this role, for two reasons: First, the nonprofit marketplace offers sources of funding for that stage of development; and, second, the Social Innovation Fund believes that public funds are most appropriately and responsibly used for programs with a higher probability of success. Consequently, the Social Innovation Fund focuses primarily on "promising" approaches. These approaches may be relatively new or have limited current market penetration, but they will have a body of operational experience and at least preliminary evidence of effectiveness, as defined in this *Notice.*

B. How does the Social Innovation Fund program work?

In FY 2011, CNCS will award a limited number of Social Innovation Fund grants to outstanding grantmaking institutions, referred to in this *Notice* as "intermediaries." These intermediaries will match every Federal dollar of the grant award in cash. They will then identify and invest at least 80% of their Federal funds (plus identified cash matching funds) in portfolios of promising community-based nonprofit organizations (subgrantees) working in low-income communities in one or more of the following issue areas:

- *Youth Development*—Preparing America's youth for success in school, active citizenship, productive work, and healthy and safe lives.
- *Economic Opportunity*—Increasing economic opportunities for economically disadvantaged individuals.
- *Healthy Futures*—Promoting healthy lifestyles and reducing the risk factors that can lead to illness.

Subgrantees will also match every dollar of their awards in cash and will

utilize CNCS funding to produce measurable outcomes within a specific issue area and geographic area, evaluate their effectiveness and replicate and expand to serve more individuals. Throughout this process, subgrantees will be supported and monitored by the intermediaries, who will remain accountable to CNCS for the achievement of the intended results set forth in their proposals.

Successful intermediary applicants in this funding competition will have:

- A track record of using rigorous evidence to select, invest in, validate, support, and monitor the replication and expansion of their subgrantees;
- The capacity to conduct a competitive process for selecting innovative nonprofit community organizations with effective and potentially transformative approaches;
- Expertise in one or more of the issue areas; and
- Deep and broad relationships with stakeholders in one or more priority issue areas and/or specific geographic regions.

This *Notice* provides full details on how applicants must address these and other factors in submitting their applications.

C. What is the match requirement for this competition?

Social Innovation Fund grantees will match the Federal funds received, dollar-for-dollar, in cash. For FY 2011, Social Innovation Fund applicants must demonstrate the ability to meet 50 percent of their cash match requirement at the time of the application. Subgrantees will be required to provide the same match (dollar-for-dollar, in cash) for every dollar received.

D. How does CNCS define "*low-income communities*"*?*

As specified in section 198K of the National and Community Service Act of 1990 ("the Act"), Social Innovation Fund intermediary grantees must make subgrants and otherwise support programs that serve "low-income" communities. For purposes of this *Notice,* "low-income community" means either:

- A population of individuals or households being served by a subgrantee on the basis of having a household income that is 200 percent or less of the applicable Federal poverty guideline, or
- Either a population of individuals or households, or a specific local geographic area, with specific measurable indicators that correlate to low-income status, such as, but not exclusive to, long-term unemployment, risk of homelessness, low school achievement, persistent hunger, or serious mental illness. An application that proposes to rely on measurable indicators should fully describe the basis for relying upon those indicators (including citations to appropriate studies). The application must also describe and cite the source of data supporting the conclusion that the targeted community meets the indicators.

E. How does the CNCS define which communities are "*significantly philanthropically underserved*"*?*

In making its final award determinations under this *Notice,* section 198K(h)(2) of the Act requires CNCS to include, among award recipients, eligible applicants that propose to provide subgrants to nonprofit community organizations that will serve "significantly philanthropically underserved" communities. For purposes of this FY 2011 *Notice,* CNCS will consider applicants serving significantly philanthropically underserved communities if they carryout activities in low-income communities (as defined above), which are also in a rural geographic area.

For purposes of this *Notice,* a rural geographic area is one with a 2003 Rural-Urban Continuum Code of 4 or higher (as issued by the U.S. Department of Agriculture, Economic Research Service). The full list of Rural-Urban Continuum Codes is listed here: *http://www.ers.usda.gov/briefing/rurality/ruralurbcon/*.

F. What is the subgranting process and what are requirements?

As discussed above, this *Notice* seeks applications for organizations to act as intermediaries. By statute, intermediaries must select subgrantees on a competitive basis. The primary functions of Social Innovation Fund awardees will be to conduct competitive subgrant competitions and administer those subgrants as required by the Act, this *Notice,* and the terms and conditions of the final awards.

Competitive subgrant competitions must be completed within six months of the grant award. CNCS may review the results of subgrant processes for compliance and appropriate outcomes.

Subgrants are to be made in annual amounts of $100,000 or more, per year, for a period between three and five years. For the FY 2011 Social Innovation Fund competition, CNCS anticipates Social Innovation Fund intermediaries awarding larger subgrants to programs that show the higher levels of impact and effectiveness, as defined below. Applicants should note that their subgrantees will be required to provide dollar-for-dollar matching funds, in cash, for each year that they receive a Social Innovation Fund subgrant.

In order to maximize the impact of the Social Innovation Fund and ensure a diverse array of innovative grantees across the Federal government, intermediary applicants should direct Social Innovation Fund funds toward innovations that will not receive grants for the *same* activities from other Federal innovation funds (*e.g.,* "Investing in Innovation" at the Federal Department of Education). Final Social Innovation Fund award decisions may take into consideration the outcomes of other Federal competitions.

G. What constitutes a "*competitive subgrant competition*"*?*

As described in this *Notice,* Social Innovation Fund intermediaries must select their subgrantees through an open and competitive process. Applicants should clearly describe their plan for subgranting in their application narrative and will want to include the characteristics described below.

To ensure that the competition is open, Intermediaries should provide sufficient public notice of the availability of Social Innovation Fund subgrants to eligible nonprofit community organizations. Intermediaries will also want to ensure that the following information is available to all potential applicants:

- What organizations are eligible for funding;
- How to obtain and submit an application;
- The criteria (including appropriate subcriteria) that will be considered in reviewing applications; and
- Any relative percentages, weights, or other means used to distinguish among the criteria.

In their application, intermediaries should also describe how their review process will ensure applications are reviewed in a manner consistent with the established criteria and how they will ensure the process is free from any actual conflicts of interest or the reasonable perception of any such conflict.

H. What emphasis does the Social Innovation Fund place on evidence of effectiveness?

CNCS is committed to using the resources available to encourage public and private investment in a portfolio of approaches with the potential to produce transformative results.

Wherever possible, this means acting on evidence from well-designed and well-implemented experimental or quasi-experimental studies that demonstrate the program has a sizeable impact. However, CNCS recognizes that in many fields, and in many parts of the country, such evidence is not available. In those cases, CNCS is committed to funding promising efforts that will build on the existing base of evidence and grow our evidence about what works, improve programs, and inform future investments. All selected subgrantees will be required to have at least "preliminary" evidence of their impact and effectiveness.

The Social Innovation Fund will support the use of evidence in several ways. First, the Social Innovation Fund will prioritize intermediaries that have a track record of using evidence (*see* Section V) to select and invest in their subgrantees. Second, the Social Innovation Fund will require the use of data and evaluation tools by both intermediaries and subgrantees to validate their effectiveness and support the replication and expansion of their programs. Third, the Social Innovation Fund will evaluate the efforts of intermediaries and their subgrantees to achieve measurable outcomes. Fourth, the Social Innovation Fund will require that intermediaries put in place plans for all subgrantees to achieve at least moderate levels of evidence.

I. What definitions of impact and evidence will the Social Innovation Fund use?

As mentioned above, successful applicants should demonstrate a history of using evidence of effectiveness to select and invest in their subgrantees and should propose a clear and detailed plan for validating the effectiveness of promising programs and evaluating the impact of their investments in replicating and expanding programs. One of the goals of these evaluation plans should be to increase the number of programs over time that have moderate or strong evidence of program effectiveness.

CNCS will use the following definitions of impact and evidence (these definitions are consistent with those used in the Investing in Innovation fund at the Federal Department of Education):

- *Strong impact* means an impact with a substantial likelihood of yielding a major change in life outcomes for individuals or improvements in community standards of living. This definition will vary with context. To give examples, a mentoring program that cut youth crime by two percent over a given period would not have a strong impact, but a program that cut such crime by 20 percent could. A program that increases earnings by $50 per week for one month, and then fades out, would not have a strong impact. A program that increased earnings by this amount for a period of years would.
- *Strong evidence* means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented experimental study or well-designed and well-implemented quasi-experimental study that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.
- *Moderate evidence* means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented experimental or quasi-experimental study supporting the effectiveness of the practice strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented experimental or quasi-experimental study that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.
- *Preliminary evidence* means evidence that is based on a reasonable hypothesis supported by research findings. Thus, research that has yielded promising results for either the program, or a similar program, will constitute preliminary evidence and will meet CNCS's criteria. Examples of research that meet the standards include: (1) Outcome studies that track program participants through a service 'pipeline' and measure participants' responses at the end of the program; and (2) pre- and post-test research that determines whether participants have improved on an outcome of interest. In future years, CNCS may expand its standard for preliminary evidence to include reasonable hypotheses that are based on theories of change.

II. Award Information

A. How much funding is available?

Subject to the availability of appropriations for FY 2011, CNCS anticipates awarding up to $XX million to approximately five to ten new Social Innovation Fund intermediary organizations. Based on recent experience and expressions of interest, CNCS anticipates that this Social Innovation Fund grant competition will be highly competitive.

B. What is the award amount?

For the FY 2011 Social Innovation Fund award competition, CNCS expects to make annual awards in the range of $1 million to $7 million. CNCS expects to make larger grants to those intermediary organizations with a track record of supporting subgrantees with strong evidence and impact (as described in Section V of this *Notice*) and the capacity to support replication or expansion.

C. What is the award period?

The award period is up to five years, with funding provided in annual increments, subject to availability of annual appropriations. Grantees will be eligible for continuation funding in the second through fifth year, contingent on the availability of appropriations, compliance with grant conditions, and satisfactory performance, including having secured sufficient matching funds.

III. Eligibility Information

A. What are the eligibility criteria?

This competition is open to all entities that meet the following compliance and eligibility criteria. Receipt of previous funding from CNCS or other Federal agencies is not a prerequisite to applying under this *Notice.*

In order to be compliant and eligible for review, an applicant must:

1. Meet specific compliance requirements including:

- Include a budget that reflects a Federal share of between $1 million and $7 million;
- Include a budget that reflects a plan to distribute at least 80 percent of awarded Federal funds to subgrantees;
- Submit application in a timely manner as provided in this *Notice;*
- Submit an application that is complete, in that it contains all required

elements and follows the instructions provided in this *Notice.*

2. Demonstrate either cash-on-hand or commitments (or a combination thereof) toward meeting 50 percent of the required first year matching funds, based on the amount of grant funds requested.

At the time of submission of the application, applicants must demonstrate either cash-on-hand or commitments (or a combination thereof) toward meeting 50 percent of their first year matching funds, based on the amount of Federal grant funds applied for. For example, a request of $1 million needs to be accompanied by documentation of having $500,000 in cash on-hand or commitments at the time of application. Instructions for how to provide documentation of match are provided in section IV.

In order to be eligible for award, an applicant must:

1. Be an existing grantmaking institution or an eligible partnership;

Existing grantmaking institutions are organizations in existence at the time of the application, which invest in nonprofit community organizations or programs as an essential (rather than collateral) means of fulfilling their mission and vision.

In keeping with this view, grantmaking institutions will generally have the following as part of their core operating functions:

- Conducting open or otherwise competitive programs to award grants to or make investments in a diverse portfolio of nonprofit community organizations;
- Negotiating specific grant requirements with nonprofit community organizations; and
- Overseeing and monitoring the performance of grantees.

An eligible partnership is a formal relationship between an existing grantmaking institution (as defined above) and either an additional grantmaking institution, a State Commission on National and Community Service (State Commission), or a chief executive officer of a unit of general local government where the partner organizations will share responsibilities under the award. In a cooperative agreement with a partnership, CNCS would expect to be dealing with each partner organization with some degree of independence concerning their collective responsibilities. For example, a partnership could include one organization that handles all aspects of a Social Innovation Fund program related to evaluation, while another organization handles all aspects related to finances and grant administration.

Other collaborations (which may be similar to consultant or contractor arrangements), where an organization obtains access to needed competencies, but remains fully responsible for performance of the cooperative agreement, will not be treated as partnerships for purposes of determining eligibility. Please *see* the description of successful 2010 Social Innovation Fund grantees for examples of existing grantmaking institutions and eligible partnerships.

2. Declare its status as either a geographically-based or issue-based Social Innovation Fund that will focus on improving measurable outcomes;

CNCS asks applicants to use a thematic approach in describing their proposed investments in community organizations. As established in section 198K of the Act, there are two basic operational models of Social Innovation Fund intermediaries. The first is a Social Innovation Fund that will operate in a single geographic location, and address one or more priority issues within that location. This model is referred to as a "geographically-based Social Innovation Fund." The second model is a Social Innovation Fund that will address a single priority issue area in multiple geographic locations. This model is referred to as an "issue-based Social Innovation Fund." CNCS will assess whether the application properly proposes goals and objectives as either a geographically-based or an issue-based Social Innovation Fund.

Geographically-Based Social Innovation Fund

To apply as a geographically-based Social Innovation Fund, the applicant must propose to focus on serving low-income communities within a specific local geographic area, *and* propose to focus on improving measurable outcomes related to *one or more* of the following priority issue areas:

- Youth Development.
- Economic Opportunity.
- Healthy Futures.

Issue-Based Social Innovation Fund

To apply as an issue-based Social Innovation Fund, the applicant must propose to focus on addressing *one* of the following priority issue areas within multiple low-income communities:

- Youth Development.
- Economic Opportunity.
- Healthy Futures.

3. Have a track record of using evidence to select, invest in, validate, and support the replication and expansion of grantees.

Applicants must include information in their application that describes their track record of using evidence, data, and evaluation tools to:

- Select and invest in subgrantees;
- Validate the effectiveness of subgrantees;
- Support, monitor, and evaluate the replication and expansion of subgrantees; and
- Achieve measurable outcomes.

4. Have a clearly-articulated plan to:

- Select, replicate and expand subgrantees that have been shown to have at least preliminary evidence of effectiveness; and
- Collaborate with a research organization to undertake rigorous evaluations to move subgrantees to at least moderate levels of evidence.

5. Have appropriate policies on conflicts of interest, self-dealing, and other improper practices.

Applicants must explain within the Program Design section of their application how they have, or will, put measures in place that will prevent conflict of interest, opportunities for self-dealing, and other improper practices from occurring, specifically during the competitive subgrant selection process.

B. How will eligibility criteria be applied?

CNCS will conduct a compliance review of applications to determine whether they meet the compliance criteria listed above. Applications' executive summaries will then be screened through an initial eligibility review which will confirm whether the applicant meets eligibility criteria 1 and 2 listed above. The compliance and initial eligibility reviews will not involve reading the entire application. Any application that does not meet each of these four initial criteria will be considered nonresponsive to this *Notice* and will not be further reviewed.

The remaining applications will be reviewed as described in this *Notice.* The review will include an evaluation of the final three eligibility criteria above as part of the overall review process. In addition, and as necessary, CNCS will further evaluate an applicant during clarifying discussions (and possible site visits) with applicants. CNCS also anticipates conducting due diligence reviews to assess or confirm information or assurances provided by applicants. As part of these application reviews, further discussions and any due diligence reviews, CNCS may conclude that an application does not meet one or more of the eligibility criteria listed above, in which case the application will be considered

nonresponsive and will not be further considered.

C. Can existing social innovation fund grantees apply under this Notice?

Existing Social Innovation Fund grantees may apply under this Notice, but their application must seek funding for a program that is distinct from the program currently being funded. An application to expand a current Social Innovation Fund supported program into different geographical areas will not be considered an application for a distinct program.

IV. Application and Submission Information

This section is divided into two parts. The first part explains when and how applications should be submitted. The second part provides explicit guidance for the application narratives that must be submitted as a part of an application.

Part 1. Application Submission Information

A. When are applications due?

Applications are due no later than 5 p.m. ET on XXXX. Applications must arrive at CNCS by the deadline in order to be considered.

B. Where can I request application information?

This *Notice* may be found on CNCS's Web site: *http://www.nationalservice.gov/about/programs/innovation.asp.*

C. What is a DUNS number and is it required?

The Dun and Bradstreet Data Universal Numbering System (DUNS) number is an identifier that helps the Federal government improve statistical reports on Federal grants and cooperative agreements. Applications must include a DUNS number on the Application for Federal Assistance (Standard Form 424). The DUNS number does not replace your Employer Identification Number. DUNS numbers may be obtained at no cost by calling the DUNS number request line at (866) 705–5711, or by applying online at *http://www.dnb.com.*

The Web site indicates a 24-hour e-mail turnaround time on requests for DUNS numbers. However, we suggest registering at least 30 days in advance of the application due date. Expedited DUNS numbers may be obtained by telephone at a cost of $99 by calling the DUNS number request line. Applications without DUNS numbers or with invalid DUNS numbers will be rejected. A DUNS number is required to apply for this funding opportunity.

D. How do I submit an application?

CNCS requires that all applicants submit their applications electronically via CNCS's Web-based application system, eGrants.

Applications must arrive at CNCS by XXXX at 5 p.m. ET in order to be considered. CNCS reserves the right to extend the submission deadline. Any notice of such extended deadline will be posted in eGrants.

We recommend that applicants create an eGrants account and begin the application at least three weeks before the deadline and begin pasting your application into eGrants no later than ten days before the deadline. Applicants should draft the application as a word processing document, then copy and paste the document into eGrants no later than 10 days before the deadline.

Contact the eGrants Help Desk at 888–677–7849 or e-mail *egrantshelp@cns.gov* if a problem arises while creating an account, preparing, or submitting an application. Be prepared to provide your application ID and organization's name. eGrants Help Desk hours are 8 p.m. ET Monday through Friday.

If technical issues are preventing you from submitting your application in eGrants by the deadline, please contact the eGrants Help Desk prior the deadline to explain the technical issue and receive a ticket number. If the issue cannot be resolved by the deadline, the applicant must continue working with the eGrants Help Desk to submit via eGrants.

E. Will late applications be considered?

CNCS may consider an application after the deadline, but only if the applicant submits a letter explaining the extenuating circumstance which caused the delay. The letter must be sent to *LateApplications@cns.gov* within the 24-hour period following the deadline. Late applications are evaluated on a case-by-case basis.

If extenuating circumstances make the use of eGrants impossible, applicants may send a hard copy of the application to the address below in Section VI, Agency Contacts, via overnight carrier. Please use a non-U.S. Postal Service because of security-related delays in receiving mail from the U.S. Postal Service. All deadlines and requirements in this Notice apply to hard copy applications. Hard copy applications must include a cover letter detailing the circumstances that make it impossible to submit via e-Grants.

Do not submit supplementary materials such as videos, brochures, letters of support, or any other item not requested in this *Notice.* CNCS will not review or return them.

F. How is an application created in eGrants?

If you need help establishing a new organization account in eGrants, or a new user account for an existing organization account, please refer to the eGrants Help Desk Web site: *http://www.nationalservice.gov/egrants/help.asp.*

After you create your eGrants account, begin by selecting "New" under the *Creating an Application* heading on your Home Page. Select "Other" as the *Program Area* and click "Go." You will then be asked to *select a NOFA.* Choose: Social Innovation Fund 2011. Once you create an application, you will be allowed to edit as needed until you are ready to submit.

Do not use the *New* button again as this will start a brand new application. Once you have initiated an application, it will be listed in the View My Grants/Applications section of the homepage under the status: *Grantee Edit of Application or Report.* If you exit and then return to eGrants and wish to continue entering or editing your application, please open your saved version by selecting *View My Grants/Applications* in the status *Grantee Edit of Application or Report.*

G. What must be included in an application?

This *Notice* contains all application instructions and is available at *http://www.nationalservice.gov/about/programs/innovation.asp.*

The application must provide a well-designed plan with a clear and compelling justification for awarding the requested funds. Guidance for completing the narrative sections is provided below. In evaluating your application, reviewers will assess the narrative on the basis of your program design, organizational capacity, and budget adequacy/cost effectiveness.

Application Instructions are formatted to correspond to fields in eGrants and clarified through this Notice.

The completed application will consist of the following components, described in detail below:

1. Standard Form 424 (SF–424) Facesheet

2. Narratives (OMB Control# 3045–0129, Expiration Date 11/30/2011)

- Executive Summary.
- Program Design.
- Organizational Capacity.
- Cost-Effectiveness and Budget Adequacy.

3. Standard Form 424A Budget

4. Authorization, Assurances, and Certifications

5. Survey on Ensuring Equal Opportunity (*Optional;* OMB Control# 1894–0010, Expiration Date 5/31/2012)

1. Standard Form 424 Facesheet

The Standard Form-424 Facesheet is required for applications submitted for Federal assistance. The SF–424 contents are duplicated in eGrants, although the format is different.

Please note that the SF–424 is automatically generated by completing the data elements in the eGrants system. When completing the application in eGrants, many of the fields will be populated with information entered during the organization's registration process.

Applicant Info

Please note that the *Authorized Representative* name is blank. You cannot select a name for this field. Instead, the Authorized Representative will need to have his/her own account to click on the Assurances and Certifications at the end of the application. (Attachment A)

Under *Project Information* select, "Enter New" and choose a title for the proposed project. It is possible to enter another address for the project, which may or not be the same as that of the Legal Applicant.

Select a Project Initiative: Choose the operational model which best describes your Social Innovation Fund application from the following options:

SIF—Geographic Healthy Futures.
SIF—Geographic Opportunity.
SIF—Geographic Youth.
SIF—Geographic Multiple Issues.
SIF—Issue Area Healthy Futures.
SIF—Issue Area Opportunity.
SIF—Issue Area Youth.

To select an individual as the *Project Director,* choose a name from the pull-down menu or add a new contact.

Application Info

Areas affected by the project: List only the largest political or municipal entities affected (*e.g.,* counties and cities).

Enter the dates for the *proposed project start and end* dates. Your project period is up to five years and must begin no later than September 30, 2011.

Intergovernmental Review of Federal Programs: This program is NOT subject to Executive Order 12372.

Delinquent on any Federal debt: Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans, and taxes. If Yes, type your explanation in the text box provided.

State Application Identifier: Enter N/A.

Note: Falsification or concealment of a material fact or submission of false, fictitious or fraudulent statements or representations to any department or agency of the United States. Government may result in a fine or imprisonment for not more than five (5) years, or both. (18 U.S.C. 1001).

2. Narrative Section

The application narrative comprises four separate sections. Content guidelines for each of these narrative sections, including character limits and content requirements, are provided later in this section of the *Notice.* The four sections include:

1. Executive Summary
2. Program Design
A. Goals and Objectives
B. Description of Activities
C. Use of Evidence
D. Community Resources
3. Organizational Capacity
A. Ability to Provide Program Oversight
B. Ability to Provide Fiscal Oversight
4. Cost-Effectiveness and Budget Adequacy
A. Budget and Program Design
B. Match Sources

3. Standard Form 424A Budget

Budget—Year One

The budget should describe how grant funds will be used to effectively support activities described in the proposal narrative. Do not include unexplained amounts, amounts for miscellaneous or contingency costs, or unallowable expenses such as entertainment costs. Round all figures to the nearest dollar. Refer to the Federal cost principles at: *http://www.whitehouse.gov/omb/circulars/index.html* for information on allowable costs in Federal grants.

We recommend you prepare your project budget off-line before entering it into eGrants. EGrants will create the budget and the budget narrative automatically from the detailed budget information you enter.

Budget Section 1 Categories:
Project Personnel Expenses.
Personnel Fringe Benefits.
Travel—Please include adequate funding for travel for at least two staff member to 2 CNCS convenings and 1 financial training. For the sake of planning purposes, assume that meetings will take place in Washington, DC.
Equipment (individual items over $5,000).
Supplies.
Contractual and Consultant Services.
Other (all subgrant costs are included in the line titled, "Subgrants").

Budget Section 2 Categories:
Source of Matching Funds.
Federally Approved Indirect Costs.

You will be prevented from validating your budget in eGrants if you do not meet the dollar-for-dollar, cash match. You will receive an error message that states, "Grantee share must be greater than or equal to CNCS share."

4. Authorization, Assurances, and Certifications

eGrants requires that you review and verify your entire application before submitting, by completing the following sections in eGrants:

- Review.
- Authorize.
- Assurances.
- Certifications.
- Verify.
- Submit.

Read the Authorization, Assurances, and Certifications carefully (Attachment A). The person who authorizes the application must be the applicant's Authorized Representative or his/her designee and must have an active eGrants account to sign these documents electronically. An Authorized Representative is the person in your organization authorized to accept and commit funds on behalf of the organization. A copy of the governing body's authorization for this official representative to sign must be on file in the applicant's office.

Be sure to check your entire application to make sure that there are no errors before submitting it. eGrants will also generate a list of errors if there are sections that need to be corrected prior to submission when you verify the application. If someone else is acting in the role of the applicant's authorized representative, that person must log into his/her eGrants account to proceed with Authorize and Submit. After signing off on the Authorization, Assurances, and Certifications, his/her name will override any previous signatory that may appear and show on the application as the Authorized Representative.

Note: Anyone within your organization who will be entering information in the application at any point during application preparation and submission in the eGrants system must have their own eGrants account. Individuals may establish an eGrants account by accessing this link: *https://egrants.cns.gov/espan/main/login.jsp* and selecting "Don't have an eGrants account? Create an account."

5. Survey on Ensuring Equal Opportunity (Optional)

Applicants are asked to complete the Survey on Ensuring Equal Opportunity

for Applicants. The survey can be found at: *http://www.americorps.gov/pdf/CNCS_2007_EO_survey.doc*. Submission of the survey is *not* required.

G. Is this funding opportunity subject to intergovernmental review?

Applicants under this program are not subject to Executive Order 12372 "Intergovernmental Review of Federal Programs."

H. What are the funding restrictions?

Budget Requirements

Applicants must submit a proposed first year budget that includes both Federal and match funding as part of their application. If an application is selected for award, CNCS will determine the final amount of the award of Federal funds, and will negotiate a final budget. Upon award, compliance with the approved budget will be a material term and condition of the cooperative agreement with the Social Innovation Fund intermediary.

Proposed and final budgets may only include allowable costs as defined in the applicable cost principles for the award recipient—

- 2 CFR Part 220—Cost Principles for Educational Institutions (OMB Circular A–21).
- 2 CFR Part 225—Cost Principles for State, Local and Tribal Governments (OMB Circular A–87).
- 2 CFR Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

Applicants who have not previously applied for Federal grant funds should understand that "allowable costs" under Federal awards do not necessarily include all costs that the organization will incur in order to perform their awards. For example, the costs of raising funds in order to meet the nonfederal share of the budget ("matching funds") are not allowable costs under OMB cost principles. The cost principles implement long standing government-wide policy decisions on the use of Federal grant funds and applicants should ensure that they are fully aware of requirements in the applicable OMB circular while preparing their budgets.

The proposed and final budgets may only include actual expenditures by the applicant organization. **The value of any in-kind goods or services provided to the applicant cannot be included in the proposed or final budgets.** The budgets will allocate allowable costs to either the Federal or non-Federal share of the total budget. At least 80 percent of the Federal share must be awarded to subgrantees; the balance may go toward the intermediary's program support costs, including evaluation, knowledge management, and Social Innovation Fund implementation.

The non-Federal share of the budget must equal or exceed the Federal share of the budget (this implements the dollar-for-dollar cash match requirement). There is no requirement that the non-Federal share of the budget "mirror" or be allocated on the same basis as the Federal share of the budget. However, CNCS is particularly interested in applicants that raise additional dollars to be provided to the subgrantees, and in applicants that propose to award the majority of their matching funds to subgrantees through their competitive subgrant selection process.

As described in the OMB cost principles, applicant budgets (other than the amounts budgeted for subgrants) will include a combination of direct or indirect costs. Applicants with approved indirect cost rates for Federal grants must use those rates for any indirect costs they include in their budgets. CNCS will work with applicants selected for award who do not have approved Federal indirect cost rates to help them develop and obtain approval for their rates.

Matching Funds

The non-Federal share of the budget represents the dollar-for-dollar matching funds requirement under this *Notice.* Any organization that receives an award under this Notice is responsible for securing the necessary matching funds. Matching funds may come from State, local, or private sources, which may include State or local agencies, businesses, private philanthropic organizations, or individuals. Federal funds, including Federal block grants being distributed by State or local governments, may not be used towards the match requirement, except under very specific circumstances.

Additionally:

- If the applicant is an eligible partnership that includes a State Commission or a local government office, the State or local government involved must provide not less than 30 percent and not more than 50 percent of the matching funds.
- CNCS is particularly interested in applicants that demonstrate that Federal funds are generating additional or new private sector funds.
- CNCS is also particularly interested in applicants that present both a strong capacity to raise additional dollars to be provided to subgrantees, and a serious commitment to share the fundraising burden for their subgrantees.

I. Where should match verification documents be submitted?

Social Innovation Fund applicants must demonstrate the ability to meet 50 percent of their cash match requirement at the time of the application. Signed letters verifying match, as well as all other required documentation, can be sent via e-mail to *Social__Innovation__FundApplication@cns.gov* or via overnight carrier (non-U.S. Postal Service because of security-related delays in receiving mail from the U.S. Postal Service) to the following address: Corporation for National and Community Service, ATT: Office of Grants Policy and Operations/Social Innovation Fund Application, 1201 New York Avenue, NW., Washington, DC 20525.

When submitting match verification by e-mail, applicants should reference their application ID and organization name in the subject line of their e-mail. Match verification, as well as all other documentation must be received by the deadline on XXXX, 5 p.m. Eastern Time. Submission of evidence of match by the application deadline is a compliance criterion.

In the FY 2011 Social Innovation Fund award competition, CNCS will not reduce the match requirement for applicants that will be serving significantly philanthropically underserved communities.

Part 2. Application Narrative Guidelines

The following guidelines should be used to draft the narrative section of the application. These instructions form the basis for the review criteria and, along with the eligibility criteria, will be used by reviewers to evaluate your application.

A. What are the character limits for the narrative section?

For the entire narrative section, the maximum character limit is 75,000 or approximately 55 double-spaced pages using a 12-point font. We recommend the following character limit disbursements for each component:

- *Executive Summary:* Up to 4,500 characters or approximately 3 double-spaced pages, 12-point font.
- *Program Design:* Up to 31,500 characters or approximately 22.5 double-spaced pages, 12-point font.
- *Organizational Capacity:* Up to 24,500 characters or approximately 17.5 double-spaced pages, 12-point font.
- *Cost-Effectiveness and Budget Adequacy:* Up to 14,000 characters or approximately 10 double-spaced pages, 12-point font.

Please note that character limits include spaces. When drafting narrative

responses, we recommend using word processing software that will check spelling and count characters. Use only uppercase letters for all section headings and other information you would like to highlight in your narrative. Bold face, bullets, underlines, or other types of formatting, charts, diagrams, and tables will not copy into eGrants.

B. What should be included in the Executive Summary?

The Executive Summary should be completed using the following guide. Executive summaries for all applications considered for funding will be made public and posted to CNCS's Web site. Executive summaries will be used in the initial eligibility review to assess applicants' status as: (1) An existing grantmaking institution or an eligible partnership; and (2) to confirm its identification as either a geographically-based or issue-based Social Innovation Fund.

Title:

For the title of your Executive Summary, applicants should use the name of the sole or lead intermediary (if an eligible partnership)

Contents:

Applicants should provide a summary of the proposed program including the following:

- Basic Information:

—Demonstrate that the applicant is an existing grantmaking institution or eligible partnership;
—Identify as either a geographically-based Social Innovation Fund or issue-based Social Innovation Fund;
—Identify priority issue area(s) of focus;
—Identify key measurable outcomes your program will improve;
—Identify specific local geographic areas where subgrantees are likely to be located (if applying as an issue-based Social Innovation Fund);
—Identify key implementation partners (if you are applying as an eligible partnership, **clearly identify** the other members of your partnership);
—Identify the grant amount you are requesting and your proposed grant period; and
—Identify the key sources of match you have secured.

- Project Overview:

—Provide an overview of your proposed program and the need(s) your program will meet;
—Describe the specific issue area(s) you will address and the measurable outcomes you propose to improve;
—Provide an overview of your proposed competitive subgrant selection process and what you hope to achieve, including how you plan to use evidence of effectiveness to identify and select subgrantees;
—Describe your track record of using rigorous evidence to select grantees; validate potentially effective programs and practices, and support and evaluate the replication and expansion of grantees;
—Describe what support and assistance you will provide selected subgrantees in terms of operations, performance measurement, and evaluation; and
—Identify major sources of match you have secured.

C. What should be included in the Program Design section?

1. Goals and Objectives

In this section, applicants should identify and describe the key objectives of their Social Innovation Fund, as well as the theory of change and overall approach to selecting and supporting subgrantees they are proposing in order to achieve their objectives.

First, applicants must identify themselves as either a geographically-based Social Innovation Fund or an issue-based Social Innovation Fund, as defined in this *Notice.* For either type, your narrative should include additional information as noted below.

Geographically-Based Social Innovation Fund

The application must do the following:

- Describe the target community, State or region that you propose to serve;
- Describe the specific priority issue area(s) on which you propose to focus—*i.e.* Youth Development, Economic Opportunity, and/or Healthy Futures—and the statistical information that supports this focus;
- Provide statistics on the needs related to the issue area(s) within the specific local geographic area;
- Describe the specific measurable outcomes you propose to improve; and
- Describe the availability of relevant data and your approach to assess whether your investments caused improvement in the proposed measurable outcomes.

Issue-Based Social Innovation Fund:

The application must do the following:

- Describe the specific issue area on which you propose to focus—*i.e.* Youth Development, Economic Opportunity, and/or Healthy Futures;
- Describe the target geographies—*i.e.* communities, States or regions—which you are likely to serve and your rationale for selecting these particular geographies;
- Provide statistics on the needs related to the issue area within the geographic areas likely to be served, including statistics demonstrating that those geographic areas have a high need in the issue area;
- Describe the measurable outcomes related to the issue area you propose to improve; and
- Describe the availability of relevant data and your approach to assess whether your investments caused improvement in the proposed measurable outcomes.

Second, applicants must describe the theory of change relevant to their proposed program and the investment strategy they intend to employ. Applicants should convey an intentional approach to solving community problems through their subgrant investments and clearly explain (1) the types of organizations they will invest in and why, and (2) the value-added activities, including technical assistance or other services, they will provide their subgrantees in order to align them with the theory of change and achieve the desired outcomes.

2. Description of Activities

Subgranting

In this section of the narrative, applicants must describe the process by which they will identify and competitively select their nonprofit community organization subgrantees in their targeted geographies. Specifically, applicants must describe how their competitive subgrant selection process will ensure a portfolio of high-quality subgrantees, with particular attention to their level of evidence (preliminary required) and relationships with and proposed engagement of experts, leaders, and community stakeholders in relevant domains. Applicants should explain how their subgrant selection process meets the definition of a competitive subgrant competition as defined in this *Notice.* The plan should also include:

- The estimated number or range of subgrant awards that will be made;
- The estimated range of subgrant award amounts;
- A description of:
  - On what basis the amount of each subgrant award will be determined. **Please note:** the Social Innovation Fund expects that the level of evidence demonstrated by subgrantees will be a key criterion, with larger sums being allocated to organizations with higher levels of evidence;
  - How key subgrant eligibility criteria required by this Notice will be

determined (particularly the level of subgrantee evidence);

○ The proposed review and selection process; and

○ Who will review grant applications and how the process will ensure appropriate conflict of interest policies are in place.

Please note, the proposed subgrant plan and timeline must demonstrate that it can be completed within six months of grant award.

The proposed subgrant competitions should produce high-quality subgrantees that are innovative nonprofit community organizations serving low-income communities. These organizations should possess:

- A strong theory of change;
- Strong leadership and financial and management systems, including data management;
- A strong financial position, including funding diversity, the ability to meet the requirements for providing dollar-for-dollar matching funds, and the ability to sustain the initiative after the subgrant period concludes;
- Strong community relationships;
- A commitment to and track record of using data and evaluation for performance and program improvement;
- At least preliminary evidence of effectiveness, including a demonstrated track record of achieving specific measurable outcomes related to the measurable outcomes for the intermediary;
- Strong potential for and interest in replication or expansion;
- A well-defined plan for achieving specific measurable outcomes connected to the measurable outcomes for the intermediary, evaluation of program effectiveness, performance improvement, and replication or expansion; and
- A commitment to use grant funds to replicate, expand, or support their programs.

Please note that, in contrast to the FY 2010 Social Innovation Fund competition, pre-selected subgrantees will no longer be accepted. All subgrantees must be selected through the open competitive processes referenced in this *Notice.*

Technical Assistance and Support

Applicants must include in their application information describing how they will provide technical assistance and support (other than financial support) that will increase the ability of subgrantees to achieve their measurable outcomes, including performance measurement, evaluation, validation, and replication or expansion. Replication or expansion may happen in various ways (including, for example, creating new sites or affiliating with another program to replicate an intervention) and in multiple contexts (including, for example, serving more people in a current geography or growing to new geographies). In this section of the narrative, you should:

- Describe your commitment to long-term relationships with subgrantees, including the process by which you establish shared short- and long-term goals and communicate and negotiate modifications;
- Describe your plan for subgrantee monitoring;
- Explain what resources and support you will provide to build subgrantee capacity in key areas, such as leadership development, financial management, data management, strategic planning, and communications;
- Describe how you will facilitate learning and improvement across your portfolio of subgrantees;
- Describe your proposed approach to supporting your subgrantees in achieving their match requirements and on-going sustainability; and
- Describe your proposed approach to accountability for subgrantees and yourself. Provide examples of and justification for potential subgrantee-level and intermediary-level metrics.

3. Use of Evidence

The Social Innovation Fund is one of several new Federal grant programs that place a significant emphasis on using evidence of program impact as a critical factor in funding decisions, with the goal of directing limited public resources toward more effective programs and increasing our knowledge about what works to get results in communities.

Intermediaries will need to demonstrate in their applications how they use evidence of program impact to select, invest in, validate and support the replication and expansion of their subgrantees. Across programs, issue areas, and regions, the available evidence of program effectiveness will necessarily vary, sometimes significantly. However, the best evidence will come from independent, well-designed studies using experimental and quasi-experimental designs, ideally from more than one site or with more than one population, that demonstrate the program has had a strong impact. Where these types of evidence are not available, the intermediaries will be expected to identify the existing levels of evidence of subgrantees and to use Social Innovation Fund resources to help validate the effectiveness of these programs through ongoing performance measurement and evaluation. In addition, CNCS expects that the use of rigorous evidence will be part of the culture of the intermediary, and that, consequently, the intermediary will assess the impact of its own activities.

In this section of the narrative, you should:

- Describe situations in which your organization has applied evidence produced by rigorous evaluations in decision-making with respect to specific programs at either the preliminary, moderate, or strong levels;
- Describe the process your organization uses to incorporate evidence into the selection, investment, validation, and support of replication, and expansion of your grantees;
- Offer specific examples of how your organization has used rigorous evidence to drive program improvement and increase the base of evidence of what works;
- Describe the study or studies that generated the evidence and the evidence that was derived from the evaluation(s), and provide Web links to recent published or unpublished full report(s) (preferably, the reports will include design and methodology documentation—links to executive summaries or journal articles are not sufficient);
- Describe your plan for using evidence, data, and evaluation tools to:

○ Select and invest in subgrantees.

○ Validate the effectiveness of grantees.

○ Support and monitor the replication and expansion of subgrantees.

○ Achieve measurable outcomes.

- Describe which level of evidence (defined in section II of this *Notice*) you will use for subgrantee selection and/or which level of evidence and impact you will assist your subgrantees in achieving (*please note:* all subgrantees must have plans in place to achieve at least moderate levels of evidence);
- Describe how you will help your subgrantees invest in improving performance improvement and achieving at least moderate levels of evidence through appropriate data collection and evaluation;
- Describe how you will help grantees design performance measurement and evaluation systems appropriate to the maturity of the program (*i.e.,* different approaches for validation versus replication or scaling up); and
- Describe your track record of sharing and integrating lessons from evaluation (both positive and negative findings) across grantees.

4. Community Resources

This section is not applicable to the Social Innovation Fund competition. Applicants should leave this blank.

D. What should be included in the Organizational Capacity section?

1. Ability To Provide Program Oversight

Applicants must establish that they have the skills and capacities required to effectively manage programs of the nature they are proposing, including a strong track record of selecting, investing in and supporting the replication and expansion of grantees.

- Describe your organization's experience in the proposed priority issue area(s) of activity and your experience operating and overseeing programs comparable to the ones proposed, including specific examples of your prior accomplishments and outcomes in these area(s);
- Provide specific examples of the effectiveness of your investment approach, including the range of replications or expansions that you have overseen or sponsored;
- Describe the kinds of resources (*e.g.,* data systems; staff) you have available to assist with subgrantee replication or expansion;
- Describe your capacity to implement the evaluation plan you have proposed;
- Describe your ability to support and oversee multiple programs at different locations;
- Describe your organization's management and staff structure and how the Board of directors, administrators, and staff members will be used;
- Identify the key program positions within your organization relevant to your proposed grant program. Describe the relevant background and experience of key staff members and their respective roles, or your plans to recruit, select, train, and support additional staff, and their proposed roles;
- Describe your experience monitoring subgrantees for site compliance against programmatic requirements; and
- Describe your capacity to manage a Federal grant and to provide on-site monitoring of the financial and other systems required to administer a Federal grant by a subgrantee.

2. Ability To Provide Financial Oversight

Applicants should describe the extent to which your organization, or proposed partnership, has key personnel with the knowledge, skills, abilities, and experience to provide fiscal oversight of subgrantees. Additionally, applicants should describe any specific experience in providing fiscal oversight of subgrantees of Federal funds.

In this section of the narrative you should:

- Describe the experience and infrastructure your organization has in managing grants from other entities;
- Identify your current organizational budget;
- Identify what percentage of the budget would this grant represent and address the implications for your organization; and
- Describe how you will ensure compliance with Federal requirements.

E. What should be included in the Cost-Effectiveness and Budget Adequacy section?

1. Budget and Program Design

In this narrative section, applicants should:

- Demonstrate how your program has or will obtain diverse non-Federal resources for program implementation and sustainability;
- Discuss the adequacy of your budget to support your program design including how it is sufficient to support your program activities and how it is linked to your desired outputs and outcomes. Specifically, describe and quantify in detail the costs associated with your proposed competitive subgrant selection process, program evaluation plans, and technical assistance to subgrantees, including costs that may be paid for with resources other than Federal or matching funds; and
- If program costs will be higher because you are proposing to serve areas that are significantly philanthropically underserved, please explain.

2. Match Sources

At the time of submission of the application, applicants must demonstrate either cash-on-hand or commitments (or a combination thereof) toward meeting 50 percent their first year matching funds.

Applicants may demonstrate cash-on-hand by a statement from the Chief Financial Officer or other officer that the organization has established a reserve of otherwise uncommitted funds for the purposes of performing a Social Innovation Fund grant. Applicants may demonstrate commitments by a dated and signed letter from each donor/foundation, indicating the amount of funds committed for the specific use of supporting the Social Innovation Fund grant. Such a letter must contain a firm commitment to provide the applicant the stated funding upon award of a Social Innovation Fund grant by CNCS. Please *see* the section in this *Notice* titled "Additional Documents—Match Verification" for further guidance on how to submit this documentation.

In this narrative section, applicants should:

- Include a discussion of the additional commitments you plan to secure, and how you will secure them. In the budget, you must list the sources of your match funds; and
- Describe the extent to which you propose to provide matching funds in excess of the minimum requirement.

V. Application Review Information

A. What are the Selection Criteria for these grants?

In evaluating applications for funding, reviewers will assess program design, organizational capacity, and cost-effectiveness and budget adequacy. The weights assigned to each category and sub-category are listed in Table 1 below. Reviewers will assess application narratives against these Selection Criteria and weight them accordingly.

TABLE 1—APPLICATION REVIEW CRITERIA

Category	Percentage	Sub-categories
Part I. Program Design	25	Goals and Objectives.
		Description of Activities.
	25	Use of Evidence.
Part II. Organizational Capacity	30	Ability to Provide Program Oversight.
		Ability to Provide Fiscal Oversight.
Part III. Cost-Effectiveness and Budget Adequacy	20	Budget and Program Design.
		Match Sources.

All applications will first be reviewed against the compliance and initial eligibility criteria outlined in Section III. If this review shows that an application does not meet any one of the four criteria specified, the application will not be further reviewed. All eligible applications will be fully reviewed and assessed based on both the additional eligibility and application review criteria.

In reviewing applications submitted in response to this *Notice,* CNCS may consider, with respect to any particular proposal, the factors and information identified in 45 CFR 2522.470.

Part I. Program Design (50%)

In assessing Program Design, expert reviewers will examine the degree to which the applicant clearly describes and convincingly addresses the narrative guidelines provided in section V. Their analysis will include the following:

A. Goals and Objectives

To what extent did the applicant:

- Clearly identify the target community or geographies which they will serve and the target issue(s) their programming will focus on?
- Provide persuasive evidence (*i.e.* statistical information) as to the identified need within the geographic area(s) listed?
- Make a persuasive case for the need related to the issue area(s) identified (*i.e.* providing statistical information)?
- Clearly identify specific measurable outcomes that will be achieved through their proposed program?
- Make a compelling case for their ability to successfully support the focus, goals, and approach they propose?

B. Description of Activities

1. Subgranting

To what extent did the applicant:

- Provide a clear and comprehensive plan for carrying out a competitive subgrant selection process?
- Clearly explain how they will identify potential grantees that meet at least the preliminary evidence of effectiveness standard?
- Describe a subgrant plan that has a reasonable chance of success at identifying potential subgrantees that meet the requirements described in section IV of this *Notice*?

2. Technical Assistance and Support

To what extent did the applicant:

- Provide a compelling plan for providing technical assistance and support for their selected subgrantee portfolio?
- Describe a clear plan for supporting subgrantee capacity development including the acquisition of matching funds and rigorous program evaluation?
- Provide a sound plan for monitoring subgrantees?

C. Use of Evidence

To what extent does the applicant:

- Demonstrate a strong track record of using evidence in past investments?
- Describe how they use evidence to drive program improvement (including citations of past studies)?
- Present persuasive evidence of experience using evidence in their past grantmaking activities?
- Provide a persuasive plan for using evidence, data, and evaluation tools to identify and select their subgrantees having at least preliminary levels of evidence?
- Identify the level of evidence they will use for subgrantee selection and/or which level of evidence or impact subgrantees will achieve (note: subgrantees must have plans in place to achieve at least moderate levels of evidence)?
- Provide a clear plan for assisting subgrantees to reach this level of evidence or impact through successful data collection and evaluation systems?
- Describe how they will help grantees design performance measurement and evaluation systems appropriate to the maturity of the program (*i.e.,* different approaches for validation versus replication or scaling up)?

D. Community Resources

Not applicable.

Part II. Organizational Capacity (30%)

In assessing the organizational capacity section, expert reviewers will assess to what extent does the applicant:

- Describe a sound organizational structure including experienced staff?
- Cite specific examples of the effectiveness of their past investment approach?
- Have experience or the capacity to successfully implement their proposed program (*i.e.* subgrant plan, technical assistance, and monitoring)?
- Have experience or capacity to successfully implement their proposed evaluation plan?
- Have experience or the capacity to successfully implement a Federal grant?

Part III. Cost-Effectiveness and Budget Adequacy (20%)

A. Budget and Program Design

In evaluating the cost effectiveness and budget adequacy section, expert reviewers will assess:

- Whether your program is cost-effective based on:
  - The extent to which your program demonstrates diverse, non-Federal resources for program implementation and sustainability;
  - The extent to which you are proposing to provide more than the minimum required share of the costs of your program; and
  - Whether the reasonable and necessary costs of your program or project are higher because you are proposing to serve areas that are significantly philanthropically underserved.
- Whether your budget is adequate to support your program design.

B. Match Sources

At the time of submission of the application, applicants must demonstrate either cash-on-hand or commitments (or a combination thereof) toward meeting 50 percent of their first year matching funds, based on the amount of Federal grant funds applied for.

B. What additional considerations will CNCS take into account during the review process?

In selecting applicants to receive awards under this *Notice,* CNCS will endeavor to include:

- Applicants who propose to serve areas that are significantly philanthropically underserved (defined in this *Notice* as rural, low-income communities), and
- A diverse set of applicants, in terms of geography and priority issue area.

C. What are the stages in the review and selection process?

1. Compliance Review

Corporation staff will review all applications to determine compliance with match, deadline, and completeness requirements identified in Section III.A.1 of this *Notice.* Applications that are submitted by the deadline, that are complete, and have demonstrated that they meet the match requirement will advance to the Initial Eligibility Review.

2. Initial Eligibility Review

Corporation staff will review all compliant applications to determine that they are submitted by eligible organizations, and that they have adequately identified what type of Social Innovation Fund program is being proposed (*i.e.* issue-based or geographic-based). This review will not include reading the entire application. Applicants that meet these two eligibility criteria (as described in

Section III.A.2 of this *Notice*) will move on to Expert Review.

3. Expert Review

Expert reviewers will assess applications based on the Program Design criteria. Each application will be reviewed by at least three expert reviewers. Reviewers will be recruited and selected on the basis of demonstrated expertise in social innovation, scaling and/or replicating successful programs, and program evaluation. All expert reviewers will be screened for conflicts of interest or possible impairments to objectivity.

4. Post Expert Review Quality Control (Quality Control)

Quality Control is designed to ensure that every eligible application receives full and fair consideration in the review process. After the expert reviewers complete their assessment, staff will review the results to determine whether any application should receive a Quality Control assessment. This additional level of review may be used for applications for which there are significant anomalies in the results from the expert review. Applications identified for additional assessment will be reviewed by an external Quality Control reviewer. The Quality Control reviewer provides an assessment of the application's key strengths and weaknesses, and compares his or her findings to that of the original expert reviewers.

5. Selection of Applications for Internal Review

Upon completing Expert Review, Corporation staff will determine which applications advance to Internal Review. Applications will advance to Internal Review based on the results of the Expert Review as well as the selection criteria specified in section 198K(h) of the Act, including:

- Including programs that propose to serve significantly philanthropically underserved communities:
- Selecting a geographically diverse set of grantees; and
- Taking into account broad community perspectives and support.

6. Internal Review

Corporation staff will assess Program Design, particularly focusing on: Strength of relationships and collaborations, opportunity for scale, potential to impact public discussion, and the rigor of sophistication of evidence and evaluation; Organizational Capacity; and Cost Effectiveness and Budget Adequacy. Following staff assessment, some applicants may receive requests to provide clarifying information. Clarification information is used by Corporation staff in making final recommendations. A request for clarification does not guarantee a grant award. Failure to respond to requests for information in a timely fashion will result in the removal of applications from consideration.

Corporation staff will determine which applications to recommend for selection based on the results of Expert Review, Internal Review, and Clarification; and the priorities, balancing characteristics, additional considerations, and strategic characteristics listed above.

7. Selection

The final portfolio will be selected based on staff recommendation, and considering overall quality, priorities, balancing characteristics, additional considerations, and strategic characteristics listed above.

E. What feedback will applicants receive?

Following grant awards, each applicant will receive the results of expert and, if applicable, internal reviews pertaining to their application.

VI. Award Administration Information

A. Award Notices

CNCS will award cooperative agreements following the grant selection announcement. CNCS anticipates announcing the results of this competition by August 2011. The government is not obligated to make any award as a result of this *Notice.*

B. Administrative and National Policy Requirements

The Notice of Grant Award (NGA) will be subject to and incorporate the requirements of section 198K of the National and Community Service Act of 1990, as well as other applicable sections of the Act. The NGA will also incorporate the approved application and budget as part of the binding commitments under any award. Awardees will be subject to the following (as applicable):

- 2 CFR Part 175—Award term for trafficking in persons.
- 2 CFR Parts 180 and 2200—Nonprocurement Debarment and Suspension.
- 2 CFR Part 215 and 45 CFR Part 2543—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110).
- 2 CFR Part 220—Cost Principles for Educational Institutions (OMB CircularA–21).
- 2 CFR Part 225—Cost Principles for State, Local and Tribal Governments (OMB Circular A–87).
- 2 CFR Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).
- 45 CFR Part 2541—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 45 CFR Part 2545—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- 45 CFR Part 2555—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.
- The Single Audit Act (31 U.S.C. Chapter 75) and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations (Available at: *http://www.whitehouse.gov/omb/assets/omb/circulars/a133/a133.pdf*).

C. Use of Materials

To ensure that materials generated with Corporation funding are available to the public and readily accessible to grantees and sub-grantees, CNCS reserves a royalty-free, nonexclusive, and irrevocable right to obtain, use, modify, reproduce, publish, or disseminate publications and materials produced under the award, including data, and to authorize others to do so.

D. Reporting Requirements

Award recipients for this competition must identify the critical outcomes of the work, indicators of success in this work, and how progress can be judged or measured. The recipients will be required to report semi-annually on agreed upon performance measures. Specific guidance on the collection of data against these standardized measures will be provided upon award. CNCS may also require an independent assessment of grantee performance.

In addition, CNCS expects intermediaries to hold subgrantees accountable for their progress against agreed-upon indicators of success. The intermediaries will be asked to report subgrantee performance information to CNCS.

E. Performance Progress Reports (PPR)

A semi-annual narrative progress report must be submitted using CNCS's Web-based grants management system, eGrants, no later than 30 days after the close of each reporting period. The report will include:

• Budget report for the completed budget period.
• Narrative analysis of the budget report, explaining differences between budgeted and actual activities and costs by funding source.
• Progress towards performance goals and any supporting data and methodology.
• Analysis of sub-application progress and performance measures.
• Discussion of any problems observed or experienced and recommended solutions.

F. Federal Financial Reports

Federal Financial Reports (FFRs) must be submitted semi-annually. The reports are cumulative and must be submitted on CNCS's Web-based grants management system, eGrants, no later than 30 days after the close of each reporting period.

G. Final Reports

In addition to submission of required semi-annual reports, the award recipient completing an agreement period will be required to submit a final report that is cumulative over the entire award period and consistent with the close-out requirements of CNCS's Office of Grants Management. The final report is due 90 days after the end of the agreement.

In lieu of the last semi-annual FFR, a final FFR must also be submitted. The final FFR is due 90 days after the end of the agreement.

H. Other Data-Collection Requirements

CNCS will require Social Innovation Fund grantees to develop final, detailed plans for selecting their subgrantees and for the evaluation of subgrantees. Final, detailed plans will need to be approved by CNCS.

The subgrant selection plan will include the following:
• The estimated number or range of subgrant awards that will be made;
• The estimated range of subgrant award amounts;
• A description of:
○ How key subgrant eligibility criteria required by this *Notice* will be determined (particularly the level of subgrantee evidence);
○ The proposed review and selection process; and
○ Who will review grant applications and how the process will ensure appropriate conflict of interest policies are in place.

The evaluation plans will address key questions, such as the following:
• What are the specific questions the evaluation(s) intends to answer?
• For grantees proposing an impact study, what type of research design (*e.g.,* randomized control trial, quasi-experimental) do you hope to conduct? Why is this evaluation design appropriate for the subgrantees' stage of development, and what useful information do you hope to gain?
• What is the timeline and estimated budget for the evaluation?
• Describe who will conduct the evaluations and the process you will employ to maintain independence and ensure high quality reports.

Award recipients must also:
• Identify and document effective practices to addressing critical community challenges in order to share those lessons broadly.
• Meet as necessary with the cognizant program officer, or other staff or consultants.

VI. Agency Contacts

This *Notice* is available at *http://www.nationalservice.gov/about/serveamerica/innovation.asp.* The TTY number is 202–606–3472. For further information or for a printed copy of this *Notice,* call (202) 606–6745. Or send an e-mail to *sifapplication@cns.gov.*

VII. Other Information

A. CNCS will host technical assistance calls and/or workshops to answer questions from potential applicants about this funding opportunity, including submitting the application through eGrants, CNCS's Web-based application system. Applicants are strongly encouraged to participate in these sessions. The first call will be held on February XXX at 1 p.m. Eastern Time. Call-in information for this technical assistance call and additional technical assistance calls will be available on CNCS's Web site at: *http://www.nationalservice.gov/about/serveamerica/innovation.asp.*

B. For additional information on the Edward M. Kennedy Serve America Act, go to: *http://www.nationalservice.gov/pdf/09_0331_recovery_summary.pdf.*

C. Public Burden Statement: The Paperwork Reduction Act of 1995 requires CNCS to inform all potential persons who are to respond to this collection of information that such persons are not required to respond unless it displays a currently valid OMB control number. (*See* 5 CFR 1320.5(b)(2)(i)). This collection is approved under OMB Control #: 3045–0129 (CNCS Universal Application, Expiration Date: 11/30/2011).

Dated: December 22, 2010.

Paul Carttar,

Director, Social Innovation Fund.

[FR Doc. 2010–32789 Filed 12–28–10; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 10–62]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–62 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 23, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–6–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

DEC 2 2 2010

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding corrected letters, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to India for defense articles and services. On December 21, 2010 we notified this sale with an estimated value of $1.4 billion. Subsequently, we discovered an error in the transmittals enclosed with the letters addressed to the Speaker, U.S. House of Representatives and to the Chairman, Committee on Foreign Relations of the Senate. The enclosed revised transmittals supersede the transmittals dated December 21, 2010, which contained incorrect quantities of the items to be purchased. We regret the error.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: India

(ii) Total Estimated Value:

Major Defense Equipment*	$ .698 billion
Other	$ .702 billion
TOTAL	$1.400 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 50 T700-GE-701D engines, 12 AN/APG-78 Fire Control Radars, 12 AN/APR-48A Radar Frequency Interferometers, 812 AGM-114L-3 HELLFIRE LONGBOW missiles, 542 AGM-114R-3 HELLFIRE II missiles, 245 STINGER Block I-92H missiles, and 23 Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensors, rockets, training and dummy missiles, 30mm ammunition, transponders, simulators, global positioning system/inertial navigation systems, communication equipment, spare and repair parts; tools and test equipment, support equipment, repair and return support, personnel training and training equipment; publications and technical documentation, U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support to be provided in conjunction with a proposed direct commercial sale of 22 AH-64D Block III APACHE Helicopters.

(iv) Military Department: Army (UAH, OAD, ADI)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: DEC 22 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India – Support for Direct Commercial Sale of AH-64D Block III APACHE Helicopters

The Government of India has requested proposals from several foreign suppliers, including the United States, to provide the next generation attack helicopter for the Indian Air Force. In this competition, the Government of India has yet to select the Boeing-United States Army proposal. This notification is being made in advance so that, in the event that the Boeing- U.S. Army proposal is selected, the United States might move as quickly as possible to implement the sale. If the Government of India selects the Boeing-U.S. Army proposal, the Government of India will request a possible sale of 50 T700-GE-701D engines, 12 AN/APG-78 Fire Control Radars, 12 AN/APR-48A Radar Frequency Interferometers, 812 AGM-114L-3 HELLFIRE LONGBOW missiles, 542 AGM-114R-3 HELLFIRE II missiles, 245 STINGER Block I-92H missiles, and 23 Modernized Target Target Acquisition Designation Sight/Pilot Night Vision Sensors, rockets, training and dummy missiles, 30mm ammunition, transponders, simulators, global positioning system/inertial navigation systems, communication equipment, spare and repair parts; tools and test equipment, support equipment, repair and return support, personnel training and training equipment; publications and technical documentation, U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support to be provided in conjunction with a proposed direct commercial sale of 22 AH-64D Block III APACHE Helicopters. The estimated cost is $1.4 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to strengthen the U.S.-India strategic relationship and to improve the security of an important partner which continues to be an important force for political stability, peace, and economic progress in South Asia.

The proposed sale in support of AH-64D helicopters will improve India's capability to strengthen its homeland defense and deter regional threats. This support for the AH-64D will provide an incremental increase in India's defensive capability to counter ground-armored threats and modernize its armed forces. India will have no difficulty absorbing this helicopter support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Lockheed Martin Corporation in Orlando, Florida; General Electric Company, in Cincinnati Ohio; Lockheed Martin Mission Systems and Sensor in Owego, New York; Longbow Limited Liability Corporation in Orlando, Florida; and Raytheon Company in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one U.S. Government and seven contractor representatives to India for one week to conduct a detailed discussion of the various aspects of the hybrid program with Government of India representatives.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/APG-78 Fire Control Radar (FCR) is an active, low-probability of intercept, millimeter-wave radar, combined with a passive Radar Frequency Interferometer (RFI) mounted on top of the helicopter mast. The FCR Ground Targeting Mode detects, locates, classifies and prioritizes stationary or moving armored vehicles, tanks and mobile air defense systems as well as hovering helicopters, helicopters, and fixed wing aircraft in normal flight. The RFI detects threat radar emissions and determines the type of radar and mode of operation. The FCR data and RFI data are fused for maximum synergism. If desired, the radar data can be used to refer targets to the regular electro-optical Target Acquisition and Designation Sight (TADS), Modernized Target Acquisition and Designation Sight (MTADS), permitting additional visual/infrared imagery and control of weapons, including the semi active laser version of the HELLFIRE. Critical system information is stored in the FCR in the form of mission executable code, target detection, classification algorithms and coded threat parametrics. This information is provided in a form that cannot be extracted by the foreign user via anti-tamper provisions built into the system. The content of these items is classified Secret. The RFI is a passive radar detection and direction finding system.

2. The Modernized Target Acquisition and Designation Sight/Modernized Pilot Night Vision Sensor (M-TADS/M-PNVS) provides second generation day, night, limited adverse weather target information, as well as night navigation capabilities. The M-PNVS provides second generation thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while M-TADS provides the co-pilot gunner with improved search, detection, recognition, and designation by means of Direct View Optics (DVO), I^2 television, second generation Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware and releasable technical manuals are Unclassified.

3. The AN/APR-48A Radar Frequency Interferometer (RFI) is a passive radar detection and direction finding system. It utilizes a detachable User Data Module (UDM) on the RFI processor, which contains the Radar Frequency threat library. The UDM, which is a hardware assemblage item, is classified Confidential when programmed with threat parametrics, threat priorities and/or techniques. Releasable technical manuals are Unclassified.

4. The STINGER Block I-92H Missile system hardware, software, and documentation contain sensitive technology and are classified Confidential.

5. The STINGER Captive Flight Trainer (CFT) is a STINGER missile guidance assembly in a launch tube. The CFT provides operator training in target acquisition, tracking, engagement, loading/unloading and sustainment training at the unit. The hardware is classified Confidential. Releasable technical manuals are Unclassified.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2010–32755 Filed 12–28–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences (USU), DoD.

ACTION: Notice of quarterly meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

Name of Committee: Board of Regents of the Uniformed Services University of the Health Sciences.

Date of Meeting: Tuesday, February 1, 2011.

8 a.m. to 10 a.m. (Open Session).
10 a.m. to 11 a.m. (Closed Session).

Location: U.S. Army Medical Museum, Building 1046, 2310 Stanley Road, San Antonio, Texas 78208.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held November 9, 2010; recommendations regarding the approval of faculty appointments and promotions in the School of Medicine, the Graduate School of Nursing, and the Postgraduate Dental College; and recommendations regarding the awarding of master's and doctoral degrees in the biomedical sciences and public health. The University President will also present a report. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of the meeting is open to the public. Seating is on a first-come basis. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed below. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the February 2011 meeting or at a future meeting.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066.

Ms. Taylor can also provide base access procedures.

Dated: December 23, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32736 Filed 12–28–10; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Independent Panel To Review the Judge Advocate Requirements of the Department of the Navy; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meetings; correction.

SUMMARY: The Independent Panel to Review the Judge Advocate Requirements of the Department of the Navy (DoN) (hereinafter referred to as the Panel) published a document in the **Federal Register** of December 17, 2010, concerning an open meeting. The document contained an incorrect time for the Panel meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Frank A. Putzu, Designated Federal Official, Department of the Navy, Office of the General Counsel, Naval Sea Systems Command, Office of Counsel, 1333 Isaac Hull Avenue, SE., Washington Navy Yard, Building 197, Room 4W–3153, Washington, DC 20376, via Telephone: 202–781–3097; Fax: 202–781–4628; or E-mail: *frank.putzu@navy.mil.*

Correction

In the **Federal Register** of December 17, 2010, in FR Doc. 2010–31797, on page 78979, in the second column, correct the **DATES** caption to read:

DATES: The meeting will be held on Friday, January 7th, 2011, from 1 p.m. to 5 p.m.

Dated: December 21, 2010.

D. J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–32758 Filed 12–28–10; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Pay Pools (PP)/ Performance Review Boards (PRB). The purpose of the PP/PRB is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance bonuses and basic pay increases. Composition of the specific PP/PRB will be determined on an ad hoc basis from among individuals listed below:

Adams, Patricia A. Ms.
Allard, Terry T. Dr.
Ardrey, Ellen Ms.
Bird, John M. VADM
Branch, Elliott B. Mr.
Brennan, Anne M. Ms.
Cali, Robert T. Mr.
Campbell, Joseph F. RADM
Chudoba, Phillip Mr.
Clark, Mark A. Mr.
Clookie, Mark D. Mr.
Commons, Gladys HON.
Cook, Charles E. III Mr.
Craig, Scott T. RADM
Easter, Steffanie B. Ms.
Eccles, Thomas J. RDML
Garcia, Juan M. HON.
Gibbs, Robert C. Mr.
Goodhart, John C. Mr.
Grosklags, Paul RDML
Harrell, Margaret R. Ms.
Hogue, Robert D. Mr.

Honecker, Mark W. Mr.
Iselin, Steven R. Mr.
Johnson, David C. RDML
Jones, Walter F. Dr.
Keeney, Carmela A. Ms.
Kistler, Michael R. Mr.
Kleintop, Maureen U. Ms.
Laux, Thomas E. Mr.
Lawrence, Joseph P. Dr.
Ledvina, Thomas N. Mr.
Leikach, Kalmen I. Mr.
Lewis, David H. RDML
Ligler, Frances S. Dr.
Maguire, Margaret M. Ms.
Marble, Douglas C. CAPT
McCormack, Donald F. Jr. Mr.
McCurdy, Jesse W. Jr. Mr.
McMahon, Michael E. RDML
McManamon, James P. RDML
McNair, John W. Mr.
Meadows, Linda J. Ms.
Mitchell, Stephen E. Mr.
Montgomery, John A. Dr.
Moran, William F. RADM
Murray, Sheryl E. Ms.
O'Neil, Scott M. Mr.
Orzalli, John C. RADM
Panter, Frank A. LTGEN
Persons, Brian J. Mr.
Pfannenstiel, Jackalyne HON.
Punderson, Jerome F. Mr.
Ridley, Mark D. Mr.
Roberson, Eileen S. Ms.
Shannon, James J. RDML
Shephard, Monica R. Ms.
Skinner, Walter M. VADM
Smith, Roderick F. Mr.
Somoroff, Allan R. Dr.
Stackley, Sean J. HON.
Stewart, Paul C. CAPT
Stiller, Allison F. Ms.
Tamburrino, Pasquale M. Mr.
Tesch, Thomas G. Mr.
Thackrah, John S. Mr.
Thomsen, James E. Mr.
Wears, Thomas G. RDML
Weddel, David W. Mr.

FOR FURTHER INFORMATION CONTACT: Ms. Danielle A. Fisher, Office of Civilian Human Resources, telephone 202–685–6341.

Dated: December 22, 2010.

H.E. Higgins,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–32807 Filed 12–28–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 28, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. 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.

Dated: December 22, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.
Title of Collection: School Improvement Status and Outcomes for Students with Disabilities Study.
OMB Control Number: Pending.
Agency Form Number(s): N/A.
Frequency of Responses: One time.
Affected Public: Individuals or households; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.
Total Estimated Number of Annual Responses: 13,276.
Total Estimated Annual Burden Hours: 4,979.

Abstract: As part of the National Assessment of Individuals with Disabilities Education Act (IDEA) 2004 (Pub. L. 108–446), the Institute of Education Sciences is evaluating how schools being required to adopt programs focused on improving academic outcomes for students with disabilities. The focus of the study is examining trends in achievement amongst students with disabilities in both schools that are and are not accountable for the performance of those students. In addition, the study focuses on describing improvement efforts in schools that have failed to make adequate yearly progress for students with disabilities in particular grades and subjects. The evaluation will use EdFacts data as well as data from surveys of school principals and special education designees about their school improvement practices. The study will use descriptive statistics and regression analysis to study how student outcomes and school practices vary with the identification of elementary and middle schools for improvement.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4411. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–32764 Filed 12–28–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 28, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. 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.

Dated: December 23, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Extension.

Title of Collection: TEACH.gov Job Listing Collection.

OMB Control Number: 1855–0022.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 60,000.

Total Estimated Annual Burden Hours: 4,500.

Abstract: TEACH.gov will be a Web site clearinghouse for information necessary to become a PK–12 teacher, including, but not limited to: career preparation information, financial aid packages, certification resources, job listings and state/district profiles. TEACH.gov will also provide inspirational material to help promote and raise the perception of the teaching profession.

This Information Collection Request (ICR) represents the job listing section of TEACH.gov. TEACH.gov will offer a section on the Web site displaying existing teacher job listings. TEACH.gov does not aim to become a "job bank", but an aggregator and referral source to other publically available existing Web site listings. TEACH.gov will display a limited amount of job listing information on its Web site and the viewer will click through the source Web site link to view the full job description and application instructions.

The publishers of a job listing may be: a commercial or non-profit job listing service, a state educational agency (State Department of Education), a local educational agency (school district) or a school not operating within a school district. For the launch of TEACH.gov, the Web site will collect and publish public school teacher jobs, Pre-Kindergarten through Grade 12.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4472. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–32791 Filed 12–28–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 28, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. 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.

Dated: December 22, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of the Secretary

Type of Review: Extension.

Title of Collection: General Education Provisions Act (GEPA) Section 427 Guidance for All Grant Applications.

OMB Control Number: 1894–0005.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Estimated Number of Annual Responses: 26,136.

Total Estimated Annual Burden Hours: 39,204.

Abstract: On October 20, 1994, the Improving America's Schools Act, Public Law 103–382, become law. The Act added a provision to the General Education Provisions Act (GEPA). Section 427 of GEPA requires an applicant for assistance under Department programs to develop and describe in the grant application the steps it proposes to take to ensure equitable access to, and equitable participation in, its proposed project for students, teachers, and other program beneficiaries with special needs. The current GEPA Section 427 guidance for discretionary grant applications and formula grant applications has approval through January 31, 2011. The Department is requesting an extension of this approval.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4420. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–32765 Filed 12–28–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, January 24, 2011, 1 p.m.–5 p.m. Tuesday, January 25, 2011, 8:30 a.m.–4:30 p.m.

ADDRESSES: The Marriott Hotel, One Hotel Circle, Hilton Head Island, SC 29928.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 24, 2011

1 p.m. Combined Committee Session.
5 p.m. Adjourn.

Tuesday, January 25, 2011

8:30 a.m. Approval of Minutes, Agency Updates, Public Comment Session, Chair and Facilitator Updates, Waste Management Committee Report, Nuclear Materials Committee Report, Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Strategic and Legacy Management Committee Report, Facility Disposition and Site Remediation Committee Report, Administrative Committee Report, Public Comment Session.
4:30 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting on Monday, January 24, 2011.

Public Participation: The EM SSAB, Savannah River Site, 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 Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/meeting_summaries_2010.html.*

Issued at Washington, DC, on December 22, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32805 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 12, 2011, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail:

halseypj@oro.doe.gov or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be on recently completed historical preservation reports for the Oak Ridge Reservation.

Public Participation: The EM SSAB, Oak Ridge, 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 Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on December 22, 2010.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32808 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act and this notice is provided in accordance with that act.

DATES: Thursday, January 20, 2011, 9 a.m.–5 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Amy Bodette, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–0383 or facsimile (202) 586–1441; e-mail: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was reestablished to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues and other activities as directed by the Secretary.

Purpose of the Meeting: The meeting will provide an overview to the Board.

Tentative Agenda: The meeting will start at 9 a.m. on January 20th and will serve as an update meeting for the Board. The tentative meeting agenda includes a welcome, opening remarks from the Secretary, reports on planned activities from subcommittees and an opportunity for public comment. The meeting will conclude at 5 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Amy Bodette no later than 5 p.m. on Tuesday, January 18, 2011, by e-mail at *seab@hq.doe.gov.* Please provide your name, organization, citizenship and contact information. Entry to the DOE Forrestal building will be restricted to those who have confirmed their attendance in advance. Anyone attending the meeting will be required to present government issued identification. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on Thursday, January 20, 2011. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 9 a.m. on January 20, 2011.

Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to Amy Bodette, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, or by email to *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB website *http://www.energy.gov/SEAB* or by contacting Ms. Bodette. She may be reached at the postal address or e-mail address above.

Issued in Washington, DC, on December 22, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32806 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 20, 2011, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Administrative Issues.
- Presentations.
- Subcommittee Chairs' Comments.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, 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 Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2010Meetings.html.*

Issued at Washington, DC, on December 22, 2010.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2010–32821 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**. This notice is being published less than 15 days from the date of the meeting due to programmatic issues.

DATES: Thursday, January 6, 2011; 6 p.m.–8 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda.
- Approval of November Minutes.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Administrative Issues:
  - Subcommittee Updates.
  - Recommendation on Speaker's Bureau Presentation.
- Public Comments.
- Final Comments.
- Adjourn.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, 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 Joel Bradburne in advance of the meeting at the phone number listed above. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC, on December 22, 2010.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32813 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 26, 2011, 1 p.m.–7 p.m.

ADDRESSES: Homewood Suites by Hilton, 18 Buffalo Trail, Pojoaque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m. Call to Order by Co-Deputy Designated Federal Officers, Ed Worth and Lee Bishop.
Establishment of a Quorum: Roll Call and Excused Absences, Lorelei Novak.
Welcome and Introductions, Ralph Phelps.
Welcome to Pojoaque Pueblo, Governor George Rivera (invited).
Approval of Agenda and November 17, 2010 Meeting Minutes.
1:30 p.m. Public Comment Period.
1:45 p.m. Old Business.
- Written Reports.
- Other Items.

2 p.m. New Business.
- Report on Long-Term Surveillance Conference, Robert Gallegos and Robert Villarreal.
- Other items.

2:45 p.m. Items from DOE, Ed Worth and Lee Bishop.
3:15 p.m. Break.
3:30 p.m. Presentation on Corrective Measures Evaluations for Material Disposal Areas G and H, Jarret Rice.
4:30 p.m. Discussion on Draft Recommendation(s).
5 p.m. Dinner Break.
6 p.m. Public Comment Period.
6:15 p.m. Consideration and Action on Draft Recommendation(s), Ralph Phelps.
6:45 p.m. Open Forum for Board Members.
7 p.m. Adjourn, Ed Worth and Lee Bishop.

Public Participation: The EM SSAB, Northern New Mexico, 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 Menice Santistevan at least seven days in advance of the

meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC, on December 22, 2010.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32816 Filed 12–28–10; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 12, 2011, 8 a.m.–5 p.m.

Opportunities for public participation will be from 10:45 a.m. to 11 a.m. and from 2:30 p.m. to 2:45 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Ameritel Inn, 645 Lindsey Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Progress to Cleanup.
- Idaho Completion Project—Labor Strategy.
- Idaho's Journey to Excellence.
- Experimental Breeder Reactor-II Decontamination and Decommissioning.
- Department of Energy Order 435.1—Radioactive Waste Management.

Public Participation: The EM SSAB, Idaho National Laboratory, 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 Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.inlemcab.org/meetings.html.*

Issued at Washington, DC, on December 22, 2010.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32811 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 12, 2011, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Recommendation Development—Industrial Sites, CAU 547.
2. Recommendation Development—Proposed Mixed Low-Level Waste Treatment.
3. Recommendation Development—Soils, CAU 372.

Public Participation: The EM SSAB, Nevada, 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 Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC, on December 22, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–32818 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and International Security, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation Between the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

This subsequent arrangement concerns the retransfer of 29,887 kg of U.S.-origin natural uranium dioxide (88.00% U), 26,300 kg of which is uranium, from Cameco Corporation (Cameco) in Port Hope, Ontario, Canada, to Korea Nuclear Fuel Co. Ltd. in Yuson-Gu, Taejon, South Korea. The material, which is currently located at Cameco, will be transferred for fuel fabrication by Korea Nuclear Fuel Co. Ltd for final use in a civilian nuclear reactor power program by Korea Hydro & Nuclear Power Co. Ltd. The material was originally obtained by Cameco from Crowe Butte Resources pursuant to export license XSOU8798.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than January 13, 2011.

Dated: December 20, 2010.

For the Department of Energy.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2010–32824 Filed 12–28–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2010–0833, FRL–9245–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Waste Generator Standards, EPA ICR Number 0820.11, OMB Control Number 2050–0035

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 is scheduled to expire on May 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 28, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2010–0833, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2010–0833. 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, Office of Solid Waste, Mail Code 5304P, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (703) 308–8827; *fax number:* (703) 308–0514; *e-mail address: oleary.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2010–0833, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access

those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

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

(iv) 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.

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. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. 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.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are private business or other for-profit.

Title: Hazardous Waste Generator Standards (Renewal).

ICR numbers: EPA ICR No. 0820.11, OMB Control No. 2050–0035.

ICR status: This ICR is currently scheduled to expire on May 31, 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 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 in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed EPA to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual disposal, or from "cradle to grave." Section 3001(d) of RCRA requires EPA to develop standards for small quantity generators. Section 3002 of RCRA states, among other things, that EPA shall establish requirements for hazardous waste generators regarding recordkeeping practices. Section 3002 also requires EPA to establish standards on appropriate use of containers by generators. Finally, Section 3017 of RCRA specifies requirements for individuals exporting hazardous waste from the United States, including a notification of the intent to export, and an annual report summarizing the types, quantities, frequency, and ultimate destination of all exported hazardous waste.

This ICR addresses the following categories of informational requirements in part 262: Pre-transport requirements for both large (LQG) and small (SQG) quantity generators; storage requirements in tanks, containment buildings and drip pads; air emission standards requirements for LQGs (referenced in 40 CFR Part 265, Subparts AA and BB); recordkeeping and reporting requirements for LQGs and SQGs; and export requirements for LQGs and SQGs (*i.e.,* notification of intent to export and annual reporting). This collection of information is necessary to help generators and EPA: (1) Identify and understand the waste streams being generated and the hazards associated with them; (2) determine whether employees have acquired the necessary expertise to perform their jobs; and (3) determine whether LQGs have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water. This information is also needed to help EPA determine whether tank systems are operated in a manner that is fully protective of human health and the environment and to ensure that releases to the environment are managed quickly and efficiently. Additionally, this information contributes to EPA's goal of preventing contamination of the environment from hazardous waste accumulation practices, including contamination from equipment leaks and process vents. Export information is needed to ensure that: (1) Foreign governments consent to U.S. exported wastes; (2) exported waste is actually managed at facilities listed in the original notifications; and (3) documents are available for compliance audits and enforcement actions.

Burden Statement: The average public reporting under this collection of information is estimated to be 2.78 hours per respondent. The average public recordkeeping burden under this collection of information is estimated to be 0.05 hours. 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 the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 101,500.

Frequency of response: Occasionally and biennially.

Estimated total average number of responses for each respondent: one.

Estimated total annual burden hours: 286,866.

Estimated total annual costs: $11,321,660. This includes $22,770 in annualized capital costs, $15,473 in O&M costs, and $11,283,417 in Respondent Labor costs.

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. At that time, 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**.

Dated: December 21, 2010.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2010–32851 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0910; FRL–8856–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; PCBs, Consolidated Reporting and Recordkeeping Requirements; EPA ICR No. 1446.10, OMB Control No. 2070–0112

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: "PCBs, Consolidated Reporting and Recordkeeping Requirements" and identified by EPA ICR No. 1446.10 and OMB Control No. 2070–0112, is scheduled to expire on October 31, 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 February 28, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0910, 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–2010–0910. 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–2010–0910. 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 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 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 Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. 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:* Sara Kemme, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 566–0511; *fax number:* (202) 566–0473; *e-mail address: kemme.sara@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 action are persons who currently possess polychlorinated biphenyl (PCB) items, PCB-contaminated equipment, or other PCB waste.

Title: PCBs, Consolidated Reporting and Record Keeping Requirements.

ICR numbers: EPA ICR No. 1446.10, OMB Control No. 2070–0112.

ICR status: This ICR is currently scheduled to expire on October 31, 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 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), directs EPA to regulate the marking and disposal of PCBs. Section 6(e)(2) bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) of TSCA establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR part 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping requirements covered by 40 CFR part 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR part 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste. This collection addresses the several information reporting requirements found in the PCB regulations.

Responses to the collection of information are mandatory (see 40 CFR part 761). Respondents may claim all or part of a response 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 about 1.2 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: 538,286.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.0.

Estimated total annual burden hours: 685,155 hours.

Estimated total annual costs: $21,839,714. This includes an estimated burden cost of $21,839,714 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 a decrease of 10,900 hours (from 696,055 hours to 685,155 hours) in the total estimated annual respondent burden compared with that identified in the information collection most recently approved by OMB. This decrease reflects improved estimates of the number of respondents EPA expects to be affected by this information collection, based on EPA's actual experience in administering this program. The supporting statement provides extensive detail about the estimated change in burden. The decrease is an adjustment.

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: December 21, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–32849 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9245–1]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by the Center for Biological Diversity (CBD). CBD filed suit in the United States District Court for the Northern District of California. The proposed settlement agreement establishes deadlines for EPA to take action relating to attainment determinations for the National Ambient Air Quality Standard for PM10, as set forth in the proposed agreement.

DATES: Written comments on the proposed settlement agreement must be received by January 28, 2011.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–1066, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Air and Radiation Law Office (2366A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5523; fax number (202) 564–5654; e-mail address: *silverman.steven@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

On April 29, 2010, CBD filed a complaint in the northern district of California alleging that EPA had failed to perform mandatory duties related to PM–10 nonattainment areas, including attainment determinations (as of the applicable attainment date) for various areas, and promulgation of FIPs for the Paul Spur/Douglas and Nogales areas in Arizona. *Center for Biological Diversity* v. *Jackson* (No. 3:10–CV–01846–MMC) (N.D. Cal.). CBD has since agreed that a number of its claims have been resolved by EPA action. With respect to the remaining claims, EPA is agreeing to sign final rules by various dates, which rules would determine whether the following areas attained the PM–10 standard by the areas' applicable attainment dates: Hayden, AZ, Eagle River, AK, Columbia Falls, MT, Libby, MT, Nogales, AZ, Reno, NV, and Paul Spur/Douglas, AZ. EPA is also agreeing to sign final rules that promulgate Federal Implementation Plans for the Douglas portion of the Paul Spur/Douglas (AZ) area and for the Nogales (AZ) area by July 27, 2012 unless EPA takes other final action by that date. (EPA has already completed certain of the actions described in the proposed settlement agreement.)

The proposed settlement agreement provides that within 10 days of signature, the parties agree to file a joint motion in the district court to administratively close this case. CBD further agrees to file a motion for voluntary dismissal, with prejudice, with respect to all claims in the Complaint within 30 days after notice appears in the **Federal Register** of EPA taking the last rulemaking action required under the proposed Agreement. If EPA fails to meet its obligations under the proposed Settlement Agreement, CBD's sole remedy is to reinstate its action.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the Settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–1066) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information

whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Patricia A. Embrey,

Acting Associate General Counsel.

[FR Doc. 2010–32772 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0194; FRL–8856–6]

AceInfo Solutions and Avaya Government Solutions, Koansys LLC, and Quality Associates Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide–related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to AceInfo Solutions and its subcontractors, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc. have been awarded a contract to perform work for OPP, and access to this information will enable AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., to fulfill the obligations of the contract.

DATES: AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., will be given access to this information on or before December 15, 2010.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8338; e-mail address: *steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0194. 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.

II. Contractor Requirements

Under Contract No. GS–06F–0337Z, AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., will perform system operations, software development and maintenance, and Web site management that will require access to potentially all data required for pesticide registration including studies, confidential statements of formula, sites and application methods (submitted and approved), quantities produced, and cases under review, to potentially include enforcement actions.

OPP has determined that access by AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the

FIFRA Information Security Manual. In addition, AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., until the requirements in this document have been fully satisfied. Records of information provided to AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., will be maintained by EPA Project Officers for this contract. All information supplied to AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., by EPA for use in connection with this contract will be returned to EPA when AceInfo Solutions and its subcontractors, Avaya Government Solutions, Koansys LLC, and Quality Associates Inc., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: December 15, 2010.

Michael Hardy,

Acting Director, Information Technology Resource Management, Division,Office of Pesticide Programs.

[FR Doc. 2010–32663 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0648; FRL–8856–4]

Web-Distributed Labeling of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is considering an initiative to make portions of pesticide labeling for certain products available electronically. Web-distributed labeling would allow users to download streamlined labeling specific to the use and state in which the application will occur. More concise labeling should increase users' comprehension and compliance with pesticide labeling, thereby improving protection of human health and the environment from risks associated with improper pesticide use. Web distributed labeling would also allow new labeling to enter the marketplace and reach the user more quickly than the current paper based labeling thus implementing both new uses and risk mitigation in a more timely manner. This notice describes potential approaches for a web-distributed labeling system and seeks stakeholder feedback on a variety of issues.

DATES: Comments must be received on or before March 29, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0648, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0648. 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 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Michelle DeVaux, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–5891; *fax number:* (703) 308–2962; *e-mail address: devaux.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you use pesticide products occupationally, manufacture or distribute pesticides, regulate pesticide products, or provide pesticide labeling to users. Potentially affected entities may include, but are not limited to:

- Persons who manufacture, distribute, sell, apply, or regulate pesticide products, including agricultural, commercial, and residential products (NAICS codes 325320, 325311, 424690, 424910, 926140).
- Establishments, such as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds (NAICS code 111).
- Establishments primarily engaged in providing pest control for crop or forestry production, or for exterminating and controlling birds, mosquitoes, rodents, termites, and other insects and

pests (NAICS codes 115112, 115310, 561710).

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Since 2007, the U.S. Environmental Protection Agency (EPA or the Agency) has been exploring the feasibility and advisability of an initiative that would allow registrants to make portions of some pesticide product labeling available via the internet. The goals of this initiative, called web-distributed labeling, are (a) to provide streamlined labeling that contains only the most current labeling information pertinent to the state where a pesticide is to be used and for the particular intended use, and (b) to move new labeling (with new uses and/or new risk mitigation) into the hands of the user in a more timely manner. This streamlined labeling will omit unrelated directions and thus should reduce the overall length of labeling by a significant amount. EPA expects shorter, more focused labeling should improve readability, and user comprehension and compliance. Web-distributed labeling would be proposed initially as a voluntary option for registrants and would not be appropriate for all pesticide products.

The web-distributed labeling initiative would create a system that would make the most current version of pesticide labeling available to purchasers and users via the internet and by other means. For certain types of pesticide products, portions of the labeling would no longer accompany the pesticide container. To obtain the additional labeling, a statement on the container label would direct a user to a specific Web site on the Internet. Once logged onto the Web site, the user would enter information identifying the product, the state where it would be applied, and the intended application site. The Web site would then provide the user with legally sufficient labeling appropriate for the proposed use, which the user could choose to download or print. Because it would contain only information relevant to the specified use, the labeling provided by the Web site would be "streamlined" compared to labeling currently on registered products, which often contain labeling information for dozens of uses. The Web site would only return state-specific labeling, not EPA's "master labeling." The web-distributed labeling system would also offer alternate delivery mechanisms for users who cannot or prefer not to access the Internet.

The Agency has had many useful discussions of its web-distributed labeling initiative with stakeholders in both formal and informal settings. Through these discussions, EPA has identified the critical elements of a web-distributed labeling system for distributing information to pesticide users via the internet. These discussions have also raised a number of issues on which EPA seeks further comment.

This Notice is organized into seven units, starting with this Introduction. Unit II. provides background information on the history of the initiative and particularly the Agency's goals in pursuing this new technique for conveying enforceable labeling information to pesticide users. Unit III. discusses the significant elements of web-distributed labeling and Unit IV. identifies issues for further consideration. Finally, Unit VI. describes a proposed path forward for determining whether, when, and how to begin implementation of the web-distributed labeling initiative.

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

EPA is taking this action under the authority of FIFRA, section 20(a). This section provides that "The Administrator shall undertake research * * * with * * * others as may be necessary to carry out the purposes of [FIFRA]." Here EPA is seeking to input from stakeholders that will help EPA assess whether to continue consideration of a web-distributed labeling program. This information is essential to understanding whether a web-distributed labeling system would improve users' compliance with pesticide labeling, thereby reducing risks to human health and the environment.

III. Overview

This unit discusses the legal framework within which EPA and the states regulate the format and content of the labeling on pesticide products; the kinds of problems that exist with pesticide labeling; and how a web-distributed labeling system would address those problems.

A. Legal Framework

1. Federal Authority. A web-distributed labeling system would be implemented under EPA's existing authority and would follow essentially the same process as is currently used. EPA regulates pesticide products under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA establishes a pre-market review and approval system called "registration." With limited exceptions, no pesticide may be sold or distributed

in the United States unless EPA has first issued a registration for the product. As part of the registration process, EPA reviews and approves the labeling of pesticide products. EPA may also review amendments to labeling proposed by the registrant, such as a change in use site or application rate. Labeling describes how a pesticide may be used safely and effectively. Traditionally, labeling has been limited to what is attached to or accompanies the product and is provided to users at the point of sale, commonly as a leaflet or booklet. The "misuse provision" in FIFRA § 12(a)(2)(G) prohibits the use of a pesticide "in a manner inconsistent with its approved labeling." In effect, the labeling is the law.

Because FIFRA requires users to follow the requirements and limitations in labeling, the labeling for a pesticide product becomes the primary mechanism by which EPA communicates enforceable requirements to pesticide users about how to use a product safely and effectively. FIFRA § 2(p) clearly allows for both a "label" and "labeling." The term "label" means "the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers." "Labeling" means "all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Agency, United States Department of Agriculture, Department of the Interior, and Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides." 7 U.S.C. 2(p)(2). Although not common currently, labeling sometimes uses a reference to other enforceable documents that do not physically accompany the container, as evidenced by the Worker Protection Standard and Bulletins Live (for threatened and endangered species and their habitats).

A registrant may distribute or sell a registered product with the composition, packaging, and labeling currently approved by the Agency. 40 CFR 152.130(a). Likewise, a registrant may distribute or sell a product under labeling bearing any subset of the approved directions for use, provided that in limiting the uses listed on the label, no changes would be necessary in precautionary statements, use classification, or packaging of the product. 40 CFR 152.130(b).

2. State Authority. EPA does not anticipate that a web-distributed labeling system would affect state authority with respect to pesticide regulation in any way. Section 24(a) of FIFRA provides that a state may regulate the sale or use of any federally registered pesticide or device in the state, but only if and to the extent the regulation does not permit any sale or use prohibited by FIFRA. Section 24(b) holds that such state shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under FIFRA. State lead agencies have the final authority to approve marketed product labeling submitted by registrants for sale and distribution in their states. Under state laws in every state, sale or distribution of a pesticide product may not occur within a state until the state registers the product.

Section 26 of FIFRA provides that a state shall have primary enforcement responsibility for pesticide use violations provided the state has adopted adequate pesticide use laws, has adopted and is implementing adequate procedures for the enforcement of such state laws and regulations, and will keep such reports showing compliance with the conditions listed above.

B. What Problems is Web-Distributed Labeling Intended to Solve?

Many people have voiced criticisms about the labeling currently on many pesticide products. Among other problems, critics complain that labeling attempts to convey too much information and that the existing process for implementing labeling changes is too slow. Both types of problems can result in the use of pesticides in ways that, EPA has determined, cause risks to human health and the environment and that might be avoided by changing the way users obtain labeling. In particular, critics note that because the labeling of a single product may contain precautions and detailed use directions for multiple uses, the labeling is often quite long—sometimes exceeding 50 pages in length. As a consequence, pesticide users complain that it is difficult to find all of the relevant parts of the labeling, and some state regulatory officials suspect that overly lengthy labeling materials has diminished user compliance rates. Further, the Agency is concerned with how much time can elapse between EPA's approval of the addition of both new uses and new restrictions on pesticide use and when products containing such statements actually reach users' hands. Many factors contribute to the delay including the need for approval by state regulatory officials following EPA approval and the long lead time involved with printing new labeling and getting the new versions on products in the marketplace. More timely implementation of approved labeling would reduce risk when new risk mitigation measures have been registered. These delays also mean that identical products bearing different versions of labeling are often available simultaneously in the marketplace. State officials and users have complained that different but legal versions of product labeling lead to confusion of users and challenges for enforcement.

C. Web-Distributed Labeling as a Solution

State regulators suggested that EPA consider web-distribution of pesticide labeling as a solution to some of the problems identified. In response, EPA initiated an internal workgroup to explore the concept of web-distributed labeling. The workgroup had extensive outreach to and conversations with stakeholders. EPA found that if accepted by users web-distributed labeling appeared feasible, and it could have benefits for many stakeholder groups.

For pesticide users, a new web-distributed labeling system would provide simplified labeling. Under the new system certain information on the label would be required to be attached to the container and the user would be required to obtain and follow a copy of state- and site-specific use directions and precautions for the product from an alternate source, either the Internet or a toll-free phone service that would mail or fax a copy of the labeling to the user. To obtain full use directions specific to the state and crop the product is intended to be applied, the container label would require a user to go to a Web site on the Internet, enter the EPA product registration number, the state where it would be applied, and the application site in order to download streamlined use directions and associated labeling. The user would be required to comply not only with restrictions appearing in the label securely attached to the container and in labeling accompanying the container, but would also have to obtain and follow those in the web-distributed labeling available from a referenced Internet source or toll-free number.

The web-distributed labeling generated by the user's specification of a particular use and state would eliminate information that is not relevant and would dramatically

simplify labeling. Most web-distributed labeling could then contain relatively brief, very specific use directions and precautions that would not be obscured by information applicable to use on other sites or with other legally sufficient application methods. Moreover, a web-distributed labeling system could make additional information available to users that they could find valuable, e.g., rate calculators or demonstration videos. The users ultimately would have in their possession all pertinent labeling information.

For pesticide regulators (*i.e.,* EPA and the states) whose mission is to protect human health and the environment, web-distributed labeling could bring at least two primary benefits in terms of protecting human health and the environment. First, EPA thinks that users would more readily understand the streamlined labeling available through a web-distributed labeling system and therefore would be more likely to comply with the requirements in the labeling. Second, by providing use-direction labeling electronically, rather than as a printed document that accompanies the pesticide container, registrants could significantly reduce the amount of time between when EPA approves a change to pesticide labeling and when the labeling reflecting the change actually reaches users in the field thus reducing risk in a more timely manner.

For registrants, web-distributed labeling could reduce printing costs and the time needed to implement new uses. When pesticide labeling changes under the current system, registrants have to arrange for printing of new labeling material to accompany each newly released container of pesticide. Many products require a large, multi-page booklet attached to the container. Under a web-distributed labeling system, the process for developing new printed labeling could be more orderly and less costly. Note: The cost of printing labeling (in a streamlined form) would be transferred to the user. Finally, for pesticide enforcement staff (states and EPA regions) web-distributed labeling could have several advantages over the current system. First, enforcers could find higher rates of user compliance with pesticide labeling and faster implementation of risk mitigation measures. Enforcers would also benefit from fewer versions of pesticide labeling in the marketplace because the portion of labeling that changes most often would not be attached to the container. In addition, web-distributed labeling that is state-specific would also make it easier for state enforcement personnel to verify that a user is complying with a state-approved version of the labeling.

EPA requests stakeholders to consider the following:

- How would web-distributed labeling benefit your organization? What problems with pesticide labeling could it address?
- How could audiences that do not traditionally use the label, such as farm workers, farm worker advocacy organizations and environmental interest groups, benefit from web-distributed labeling?
- What resource savings could be achieved in your organization if web-distributed labeling were implemented? What costs would be incurred?
- Please provide any general comments about the concept of web-distributed labeling and the potential benefits to stakeholder groups including pesticide users, registrants, regulators, farm worker advocacy groups, environmental interest organizations, and the public.

IV. Overview of Web-Distributed Labeling

A. The Current System

In most cases, registration of a pesticide product begins with approval by EPA of a "master label," which is EPA-approved labeling that contains the complete set of precautions and use directions for all approved uses of the product. This is followed by state approval of a "marketed label," which is specific labeling associated with a product as it will be sold in a state; the "marketed label" must be the same as (or a legally sufficient subset of) the approved FIFRA master label.

1. EPA's Registration Process. EPA authorizes the use of pesticide product primarily under section 3 of FIFRA (federal registration). Under this provision, EPA is responsible for ensuring that approved pesticide products will not pose unreasonable adverse effects to human health or the environment. EPA defines risk standards, identifies data studies required to evaluate these risks, and specifies the requirements for product labeling.

Applicants for registration are responsible for developing the formulation of a product, providing data from required studies), and providing product labeling which details how a product is to be used. Much of the labeling content is prescribed based on the chemical and toxicological properties of the product, for example if a product is a severe skin irritant, it is labeled as toxicity category II (*see* 40 CFR 156 and various Pesticide Registration Notices). It is left to the applicant to propose the directions for use describing the application timing, method, and equipment, use rates, re-treatment intervals, maximum quantities per application and year, and other restrictions. These use directions are used to define the exposure parameters in a risk assessment. EPA's registration decisions are based on conducting a risk assessment of the pesticide developed using environmental fate, toxicology, and ecological effects data provided by an applicant as the applicant proposed the pesticide be used (i.e., as specified in the proposed product labeling.) Following EPA's risk assessment, a detailed review is conducted to ensure that the proposed labeling adheres to current EPA regulations and policies. Issues identified during the risk assessment can often be mitigated by adjusting the labeling on the product prior to approval.

When EPA has completed a review of the application for registration and finds that the product will not pose unreasonable adverse effects to human health or the environment, the product is registered and EPA approves a master label. The master label contains a complete set of precautions and use directions for all approved uses of a product, but is not generally the label that accompanies the pesticide container. The master label is used to develop marketed product labeling (discussed below).

More information on EPA's pesticide registration process is available at *http://www.epa.gov/pesticides/regulating/registering/index.htm.*

2. State Registration. All states have a state pesticide registration requirement under their respective state laws. Therefore, in addition to registering all pesticides with EPA under FIFRA for approval of a master label, pesticide companies must also receive approval from a state in order to distribute, sell, offer for sale, and in some cases use, the product in that state. The process to obtain a state registration can vary greatly among states, as can the level and type of review conducted by the state lead agency. While some states may simply record the existence of each marketed label, other states may do a detailed comparison of the "marketed label" to the EPA "master label," or conduct extensive risk assessments or other reviews.

In addition to varying greatly in how they register pesticide products and approve labeling, states vary greatly in how they manage labeling and other supporting documents. Because of available resources or statutory

requirements, some states may manage pesticide labeling in their files in hard-copy format. Other states receive, review, and/or manage pesticide labels in electronic format, including sophisticated online portals for registrants to submit online pesticide registration applications, electronic documents, and payments. Regardless of how they manage labeling as part of their state pesticide registration program, most state lead agencies agree that the labeling found on or accompanying the product in the channels of trade, despite the version, is the labeling that is enforceable in instances of misuse.

3. Pesticide Labeling Production Process. Despite the complexity and time involved in getting a pesticide product label registered with both EPA and states, registration is only one aspect of moving a product from initial concept to final use by applicator. Even focused simply on the labeling aspects, the overall production process encompasses product development, regulatory approval of the master label by EPA, development of the marketed label, regulatory approval of the marketed label by states, printing of state approved marketed labels, filling and labeling of product containers, distributing product to the point of sale, and providing post sale product stewardship to both applicators and enforcement staff.

B. History of Development of Web-Distributed Labeling

State officials involved in pesticide regulation deserve credit for initiating EPA's consideration of a web-distributed labeling system. The State-FIFRA Issues Research and Evaluation Group, a group of representatives from State organizations responsible for state level regulation of pesticides, produced two issue papers on the electronic submission and distribution of pesticide labeling. EPA's Office of Pesticide Programs formed an e-label review workgroup, tasked with exploring ways of using technology to make the pesticide labeling submission, review, approval, and dissemination process more efficient. In the summer of 2007, the Association of American Pesticide Control Officials (AAPCO), the national association representing State lead agencies for pesticide regulation, presented the idea for web-distributed labeling to the director of the Office of Pesticide Programs.

After receiving the request to consider web-distributed labeling, EPA formed an internal workgroup with members from the Office of Pesticide Programs, Office of Enforcement and Compliance Assistance, Office of General Counsel, Regional Offices, and 2 state representatives. The workgroup discussed the mechanics of web-distributed labeling and how it would complement ongoing label improvement programs. The workgroup conducted extensive stakeholder outreach to individuals and associations to describe the concept of web-distributed labeling and to solicit stakeholder feedback. Using the stakeholders' input, the EPA internal workgroup developed discussion papers to describe some of the details around specific elements of web-distributed labeling.

In May, 2008, EPA requested formal feedback on web-distributed labeling from the Pesticide Program Dialogue Committee (PPDC), a federal advisory committee for the Office of Pesticide Programs. In response, a PPDC workgroup was formed to review and respond to the discussion papers developed by EPA. The PPDC workgroup includes representatives from user and grower groups; public interest groups; trade associations; industry; state, local, and tribal government; educational organizations; federal agencies; and others. From October 2008 through October 2009 the PPDC web-distributed labeling workgroup met to discuss and provide comment on papers. A full listing of the meetings and papers considered is available at: *http://epa.gov/pesticides/ppdc/distr-labeling/index.html.*

In October 2009, the PPDC workgroup discussed a pilot for web-distributed labeling that would allow users to test the functionality of one or several web-distributed labeling Web sites using mocked-up labeling. The pilot would be conducted without any actual labeling changes. Based on the feedback received from the PPDC workgroup, EPA decided to shift the focus of the pilot from developing Web sites capable of delivering web-distributed labeling to soliciting user feedback on the concept of web-distributed labeling. The pilot is discussed in further detail in Unit VI. of this Notice. EPA invited participation in it customer acceptance pilot through a **Federal Register** Notice published on August 18, 2010. *See http://www.gpo.gov/fdsys/pkg/FR–2010–08–18/pdf/2010–20449.pdf.*

C. Web-Distributed Labeling Elements

1. Scope of Web-Distributed Labeling. A primary consideration before web-distributed labeling could be implemented is which products should be eligible to participate. EPA does not anticipate that all products would be eligible for web-distributed labeling initially.

EPA is not inclined to limit products' eligibility for web-distributed labeling based on how the product is registered or distributed. Web-distributed labeling would be available for otherwise eligible products whether they are sold by registrants directly or through another company as supplemental distributor products.

Both unrestricted (general use) and restricted use products (RUPs) may be appropriate for web-distributed labeling. General use products are accessible to all applicators and can be used in agricultural, residential, and industrial settings, among others. RUPs are available only to applicators that have been certified as competent by a state, tribal, or federal agency, and applications are generally conducted as part of the applicator's primary occupation rather than incidentally. Both types of products would benefit from streamlined labeling available through web-distributed labeling. In general, EPA believes that RUP applicators, because of their training, certification, and awareness of legal responsibility to comply with all labeling, are more likely to comply with the requirement to obtain web-distributed labeling. However, many professional applicators also use general use products and would also comply. Therefore, EPA would invite manufacturers of both general use products and RUPs to participate in web-distributed labeling.

EPA proposes to limit the scope of products eligible to use a web distributed labeling system to those that are used as part of a money-making or business operation, or as a public regulatory function. Residential, consumer use products would not be included in web distributed labeling and would continue to be distributed with the full labeling accompanying the product container. Registrants may choose to post the labeling for residential products to the Web sites, however, so that consumers may obtain some of the benefits of web distributed labeling, such as viewing text in a larger font size.

Further consideration of the potential scope of web-distributed labeling is available at *http://epa.gov/pesticides/ppdc/distr-labeling/oct08/wdl-scope.pdf.*

EPA requests feedback on the following:

- What should be the scope of products under consideration as eligible for web-distributed labeling?
- What criteria should be used to determine which types of pesticides should be eligible for web-distributed labeling?

2. Voluntary vs. Mandatory Participation. EPA thinks that participation in the web-distributed labeling system should initially be voluntary. As discussed above, EPA would invite both general and restricted use pesticide manufacturers to participate in the program. Once web-distributed labeling is established and has operated for a few years, the Agency would expect to evaluate its impact on pesticide safety and may consider implementing a mandatory system if appropriate.

EPA requests comments on the following:

- What are the benefits and drawbacks associated with voluntary and mandatory participation in web-distributed labeling?
- How would pesticide registrants, states, and users benefit from a voluntary web-distributed labeling system?
- How would a voluntary system negatively affect these groups?
- Why would stakeholders support mandatory participation in a web-distributed labeling system?
- What would be the drawbacks of a mandatory system?

3. What's on a Pesticide Container and on the Web-Distributed Labeling Web site? Implementation of web-distributed labeling would require decisions be made regarding which types of information would appear on the label securely- attached to the container, which would appear in labeling accompanying the container, and which would be web-distributed, or available through alternate delivery mechanisms. Currently, for virtually all products, all labeling is attached to the pesticide container or distributed at the point of sale with the product. The labeling includes all information required by FIFRA and EPA's regulations. Web-distributed labeling would be used for state-approved, marketed product labeling, not EPA's master labeling.

Under web-distributed labeling, EPA would partition the label and labeling elements according to whether they would be securely-attached to the container, accompanying the container, or in web-distributed labeling. The securely-attached or accompanying label and labeling would contain all safety and product identification information; state- or site-specific use direction information would be available through web-distributed labeling. Users accessing the labeling through an alternate delivery mechanism would receive a copy of the labeling containing all information in the securely attached, in the accompanying labeling, and available via the web-distributed labeling system. A full list of the components that would appear on the label and those components that would be available through the web-distributed labeling system can be found at: *http://epa.gov/pesticides/ppdc/distr-labeling/oct08/container-label.pdf.*

i. Information Securely Attached to the Container. In accordance with FIFRA § 2(q) and 40 CFR Part 156, specific label elements must be on a label securely-attached to the container. The same requirements would apply to a web-distributed labeling system. Thus, the following elements must be found on the label securely-attached to the container: Directions for use or a reference statement to directions for use found elsewhere in labeling; use classification (Restricted Use Product statement); violation of federal law statement; product registration number; signal word; Worker Protection Standard referral statements; storage and disposal requirements; product establishment number; brand/product/trademarked name; ingredient statement; net weight or contents; skull & crossbones/POISON and statement of practical treatment if highly toxic; name and address of producer or registrant; warning or caution statement adequate to protect health and the environment (by regulation, this requires physical and chemical hazard information, and human health and environmental precautionary statements); and (for labels of products for export only) "Not registered for Use in the United States of America.

Under web-distributed labeling, a "released for shipment date" would be required to appear on the container label. The released for shipment date should appear with the registration number on the product container label and its purpose is detailed in Section B.3.

In addition to the existing requirements outlined above, under web-distributed labeling EPA would require a container label to include a reference statement, likely under the heading "Directions for Use" where the violation of federal law statement appears, that reminds users they are bound by the directions on the container as well as those included in the web-distributed labeling. The language requiring users to obtain and comply with web-distributed labeling would be similar to:

"You must obtain additional labeling, which includes directions for use, from [insert the Web site address for the web-distributed labeling system] or by calling [insert the toll-free telephone number]. This additional labeling must be dated after the "released for shipment date" appearing [indicate location on container]. You must possess a copy of this additional labeling at the time of application. It is a violation of federal law to use this product in a manner inconsistent with its attached label or the additional labeling obtained in one of the methods listed above."

While not required to be attached to the container, users and the environment would benefit from additional information attached to or physically accompanying the container. For example, since pesticides in their containers move in the channels of trade, it is important to provide basic information regarding safe storage, handling, and disposal of the product, as well as what to do in case of accidents and spills, to anyone who may come in contact with the pesticide, such as distributors, applicators, handlers, medical providers, or first responders.

ii. Web-Distributed Labeling Content. Web-distributed labeling would encompass all labeling information not required to be affixed to the container. In order to minimize costs of reprinting product labels, pesticide companies would not want to put information in the label or in the labeling physically accompanying the container that would be likely to change frequently. The web-distributed labeling would include components of the labeling that are specific to the type of application, such as engineering controls, environmental hazards, use directions and advisory statements. There has been discussion about the concerns for putting the target sites and pests on the label that is securely attached or accompanying the container. However, any change in site or pest would require manufacturers to print new labels and have them in the channels of trade prior to making any changes to the web-database. If these items changed frequently and they were securely attached or accompanying the container, the benefit of web-distributed labeling would be reduced greatly.

EPA requests comments on the following:

- Do you agree with the proposed content that would be included on the web-distributed portion of the labeling?
- Should other content be included on the container-affixed label?

4. Lifespan of Web-Distributed Labeling. This unit addresses how a system for web-distributed labeling would affect the length of time that pesticide labeling would be valid. EPA proposes to adopt an approach that would operate in essentially the same manner as the current, paper-based system.

i. The Current System. The current, paper-based system generally does not result in a fixed "lifespan" for pesticide labeling—the duration of time over which a user may lawfully use a pesticide according to its labeling. Users may use a pesticide consistent with the labeling that accompanied it when the pesticide was obtained for as long as they have the pesticide or unless EPA issues an order that affects such use. FIFRA § 12(a)(2)(A) makes it unlawful for a person to detach or alter the labeling on a registered pesticide product. Consequently, each time that a pesticide is used up and the container is disposed of, the user must get a new container with new labeling that he cannot alter or deface. This means that the labeling accompanying a container is legally valid only for as long as the user possesses the specific product container and is only valid with respect to the quantity of pesticide in that container.

Currently, when EPA approves changes to a registrant's labeling, the registrant places the revised labeling on newly produced quantities of the pesticide within 18 months of the approval. These time periods allow application of the new labeling in the production process over an extended timeframe rather than requiring the registrant to collect, relabel, and redistributed the product with an amended label. Users buying product containers bearing the revised labeling thus become subject to the new requirements.

In sum, pesticide users have come to expect that they will be able to use a pesticide according to the labeling accompanying the product container until the all of the pesticide has been used up. This expectation holds even if EPA requires changes to the labeling on quantities of the identical product when sold in the future.

ii. The Proposed System. One premise of a web-distributed labeling system is that labeling would not physically accompany the pesticide product at the time of sale. Instead, material would become "labeling" because the container label would refer to it and make it legally binding. Referenced labeling would be obtained separately from the product container. Once obtained, such labeling applies to all products that refer to it, not necessarily just a single specific container as is the case for the paper-based system. One result of this is if a user possesses multiple containers of the same pesticide product, it may not be necessary to require the user to obtain separate labeling for each discrete container of a pesticide he possesses.

The attenuation of the labeling and the product container creates a potential problem—old, out-of-date labeling could be associated with newly produced quantities of a pesticide by virtue of having the same registration number. Further, just as now happens under the current paper-based system, when EPA amends the labeling of a pesticide product to incorporate new protections for human health or the environment, those protections should apply prospectively to users who purchase products sold after the date of the amendment. But, because web-distributed labeling is not linked to particular containers, the new system must ensure that users do not continue to follow old labeling when using new products.

To address this situation, EPA proposes the following approach. EPA would require product containers to bear a statement that the specific container was "released for shipment on [date]" and also require the user to obtain a valid version of the labeling from the Web site on or after that date. The date on which a product was released for shipment is the date on which the registrant made a pesticide product available for sale or distribution to another person. (40 CFR 152.3) Finally, the container label would specify that the product could be used only in accordance with an approved version of the labeling obtained after the production date from the Web site listed on the labeling. In addition, labeling obtained would include a prominent statement of the date on which the labeling was generated, along with a statement that the user could use the labeling only if the product container indicated it had been released for shipment before the date in the labeling. Once a product is in the channels of trade and the container label changes, it would be treated the same way existing stocks are treated under the current system, and dealers could lawfully sell the product with labeling that had been superseded by a new version.

The consequence of this approach would be that a pesticide could lawfully be used according to any version of the labeling that a user obtained after the date on which the product was released for shipment. Once the pesticide in the container was used up (or disposed of), if the user wanted an additional quantity of the pesticide, the user would need to obtain a new container of the pesticide labeled with a new "released for shipment on [date]." Labeling that predated the date on the newly obtained quantity of pesticide would no longer be valid. In effect, this approach would give web-distributed labeling an indeterminate lifespan equal to the amount of time a user takes to use up the pesticide material—the same lifespan as under the current system. (As with the paper-based system, EPA would retain the authority under FIFRA to cancel or suspend the registration of a pesticide using web-distributed labeling, and could further prohibit use of existing stocks, if deemed necessary.)

EPA requests comments on the following:

- What are the benefits and drawbacks associated with tying the lifespan of web-distributed labeling to a "released for shipment date?"
- What are the benefits and drawbacks of a requirement for web-distributed labeling to have a specific expiration date?
- If a specific expiration date is recommended, should it be a firm date or a set time period after the product is released for shipment? Why?

5. Functionality and Hosting of Web-Distributed Labeling Web site(s). This section presents EPA's thoughts on the web-distributed labeling Web site functionality and Web site hosting. The functionality section describes in a general sense what users would be able to do if the web-distributed labeling Web site were available. The hosting section presents several basic concepts the EPA has discussed for housing and maintaining the software and hardware that support the web-distributed labeling Web site. EPA has differentiated the major components of Web site functionality in two categories: Critical components and desirable components. The critical components are those that EPA believes are necessary for implementing a useable web-distributed labeling Web site; without these critical components, the key benefits described earlier in this Notice may not be realized. The desirable components are those that EPA believes would add value to a web-distributed labeling Web site; however, these desirable components are not necessary for implementing a useable web-distributed labeling Web site. A full discussion of the proposed functionality is available at *http://epa.gov/pesticides/ppdc/distr-labeling/jan09/functionality.pdf.*

i. Critical Components of the Web site(s). The first three critical components relate particularly to users of pesticide products. Users must be able access web-distributed labeling. This would include searching the web-distributed labeling database by the registration number, the state in which the application is to be made, and the use site to which the application is to be made. By specifying these search

criteria, the user would choose the labeling he/she wishes to view. Second, the Web site must allow all users to view both current and historic versions of product labeling for pesticides in the web-distributed labeling system. This would include the most recently approved version of the labeling, as well as all versions of web-distributed labeling that had been previously approved and available for download so that users could access versions of the labeling that correspond to a container purchased at an earlier date and compare historic and current versions of labeling, and inspectors could access all versions of labeling that corresponds to a container. Finally, the Web site must have user-friendly interface and be easy to navigate. Some people that would use a potential web-distributed labeling Web site might have little to no experience navigating the Internet. In order to encourage utilization of the web-distributed labeling system Web site, it is important that it be intuitive and easy for an inexperienced Internet user to navigate.

There are also critical components related to the posting of labeling and security of the Web site. In order to house accurate current and historical versions of labeling, the web-distributed labeling Web site must allow participating registrants (or agents with appropriate access rights) to upload new versions of web-distributed labeling. This component will ensure that only authorized users are permitted to make timely updates to web-distributed labeling Web site content. In addition, the web-distributed labeling Web site must employ appropriate security measures to minimize the possibility of unauthorized persons uploading, editing or otherwise tampering with web-distributed labeling information. For example, the system could maintain password-protected access and an audit history for persons performing any activity other than accessing labeling. Appropriate functionality would allow the Web site to meet the needs of users by delivering streamlined labeling and to ensure the integrity of the labeling through necessary security measures.

ii. Desirable Components of the Web site(s). In contrast to the necessary functionality listed above, the following components are desirable in a web-distributed labeling system to facilitate a more positive user experience. The desirable components of a Web site are providing single URL (Web site address) to access the web-distributed labeling system, providing a static URL for each product, allowing users to select the format for the labeling, highlighting changes between current and historical versions of labeling, and providing links to training and other tools for applicators.

A single uniform resource locator (URL) (*e.g. http://www.webdistributedlabeling.com*) as opposed to multiple URLs (*e.g., http://www.webdistributedlabeling.com, http://www.webdistributedlabeling22.com,* etc. **Note:** These Web sites are fictional and will not provide legally enforceable pesticide product labeling.) would allow users to visit a single Web site to search for and download all labeling. While the container label will identify the Web site for each product, having a single Web site address on all products participating in the web-distributed labeling system should make education and training of users easier and more effective.

Static web addresses for web-distributed labeling would always link to the current labeling for Product X, for example *http://www.webdistributedlabeling.com/ProductX_current.htm.* This would allow users to ensure that they are always linking to the current version of the labeling without having to search through the Web site.

A feature that allows users to specify the format of the labeling, *e.g.,* PDF, html, mobile version, would provide users with flexibility to download or view the labeling in the format most convenient and accessible to them.

A feature that highlights changes made in the most recent version of web-distributed labeling by comparing the most recent version with a historic version of web-distributed labeling would assist users in quickly determining what components of the labeling had changed.

Finally, the web-distributed labeling Web site could also be used to house or link to materials that may be helpful to pesticide applicators or other users, such as training materials, rate calculators, supplementary health and safety information, equipment calibration instructions, stewardship information, versions of labeling in different languages, and many other types of information.

EPA considered an optional feature of providing the EPA-approved master labeling, but decided that it would not be a good fit in the web-distributed labeling system. An electronic version of the master labeling can currently be found in the Pesticide Product Labeling System (PPLS). Since the intent of web-distributed labeling is to provide state-approved labeling to the user and master labeling is already available electronically, the Agency decided against adding this as a desirable component of a potential web-distributed labeling Web site.

iii. Web site Hosting Approaches. Although the specifics of the technological architecture used to implement the WDL should be left up to those involved in the actual development, EPA considered some basic concepts of web site and database design, including who should host, or be responsible for hosting, the WDL Web site(s). This section discusses options for the Web site portal and databases, and potential hosts and the advantages and disadvantages associated with each. A discussion paper on web-distributed labeling Web site hosting is available at *http://www.epa.gov/pesticides/regulating/registering/index.htm.*

There are two critical components in the architecture of the web-distributed labeling system:

(1) The portal, *i.e.,* the initial Web site visited by users or the public to begin their search for web-distributed labeling, and

(2) The database(s) holding the files necessary to generate web-distributed labeling. EPA believes that a single Web site portal connected to multiple databases maintained by pesticide companies would be the most appropriate option for a web-distributed labeling system.

A single Web site would provide users with one access point for all information related to web-distributed labeling. The Web site would contain software necessary to allow users to specify search criteria (*i.e.,* registration number, state, and use site) and for the Web site to identify and interact with separate databases containing the information necessary to generate appropriate web-distributed labeling. This alternative would operate in a manner similar to a service such as the online bookseller, Amazon. All users visit the Amazon.com Web site to search for their products, and the Amazon Web site, in turn, searches multiple databases (of its warehouses and partner dealers) to provide the requested information back to the user. For the WDL system, a single pesticide labeling portal would be linked to databases maintained by registrant and/or third parties. Multiple databases would allow multiple entities to share the responsibility for maintaining and updating databases. Such a system would require the use of consistent standards for data-formatting and searching to be effective.

One alternative is that all WDL information would be maintained in a single database. This approach would assure a standard delivery format for

labeling, and the single access point would be easier for users to remember. A single database would assist federal and state enforcement personnel in reviewing the labeling. However, a single portal and database could require a single entity to process and maintain a large amount of information.

A second alternative is multiple Web site portals with multiple databases, which would require the user to visit a specific site for each product. It would be similar to the multiple options available to purchase a car online. A user can visit each dealer's Web site but cannot search all databases at once for information on a car; each database must be searched separately for different car models. This approach would allow each entity to maintain data in its own format, but would impose additional burden on users to visit a different Web site for each product they intend to use. Extra burden could lead to non-compliance. It would also be more burdensome for enforcement personnel who would have to search each Web site/database individually.

iv. Potential Web site Portal and Database Hosts. Whether the approach chosen is a single Web site and database, a single Web site linked to multiple databases, or multiple Web sites with multiple databases, the options for hosts of the web-distributed labeling Web site portal(s) and database(s) are the same. EPA, registrants, and third-party vendors could operate the Web site(s) and database(s). While there are positives and negatives associated with each, if the preferred single portal, multiple databases approach is chosen, then the most likely hosts of the Web site would be EPA or a third-party vendor and the hosts of the databases would be registrants and third-party vendors.

Regardless of which entity hosts the Web site, registrants would be responsible for posting the marketed product labeling approved by the state. Registrants would have the flexibility to post each product's labeling as it is approved by the state. States would be able to continue to use their current process for reviewing and approving pesticide labeling, whether it is done electronically or on paper. States would not be responsible for posting labeling but would have full access to the system in order to verify that the labeling posted is accurate and matches the state-approved version.

EPA: As the Federal authority for pesticide registration and regulation, EPA is involved in the registration of almost all pesticides. It maintains historical records of all master labels submitted and approved, and it is developing a structured database for all master labeling content (E-label program). If EPA were to host the Web site for web-distributed labeling, EPA would likely operate a single portal Web site and would likely rely on other entities (*e.g.*, registrants or states) to provide the electronic files on state-approved marketed product labeling that would be accessed by and through the Web site.

Potential disadvantages to EPA's serving as the host are that EPA may be unable or less likely than a third-party vendor to link to other commercial Web sites, limiting the potential benefit of web-distributed labeling to provide links to training and tools to users. Also, with EPA as host, determining who is liable for errors with the labeling could be more difficult.

Although EPA does maintain master labeling for all pesticide products, users rely on the state-approved marketed product labeling to make applications. EPA is not involved in the state approval process for marketed product labeling and does not require states or registrants to submit the approved marketed product labeling to the Agency. Making EPA the host of the web-distributed labeling Web site would increase burden on registrants to submit the final state approved labeling to EPA for posting.

Registrants: Registrants are ultimately responsible for obtaining approval for and distributing pesticide labeling. Registrants submit their applications for registration to EPA and, after receiving approval, use the master label to get state approval for marketed product labeling and updates. Because registrants track the labeling at each step of the approval process, they are in best position to ensure that the labeling provided to the web-distributed Web site(s) is the latest approved version. In addition, most registrants already have and maintain Web sites for their products and could use them as the basis for a web-distributed labeling.

Third-Party Vendor: Third-party vendors could include for-profit and not-for-profit organizations. Some already provide a service to registrants and states facilitating electronic submission of labeling or to the public by harvesting available pesticide registration data and making it available online. Some third-party vendors charge a subscription fee.

Third parties could offer comprehensive services to create electronic files for labeling and submitting them for approval by the state, or could rely on other entities (*e.g.,* registrants or states) to provide the electronic files on state-approved marketed product labeling that would be accessed by and through the Web site(s).

A registrant or third-party would likely be able to quickly adopt new technology with fewer constraints than apply to the federal government and might be able, therefore, to revise the Web site to improve the user experience. However, adding another actor to the pesticide labeling process introduces the potential for additional errors. Overall, third-parties are more flexible and attuned to the needs of their customers, whether they are users, registrants, or government.

States: EPA initially considered suggesting states as a potential host for a web-distributed labeling system. State lead agencies provide the final approval for a product's labeling before it is released into the channels of trade. However, because states have independent processes for reviewing and approving labeling and may not have the capacity to build a Web site for labeling, EPA decided not to consider states as a potential host for a web-distributed labeling Web site.

EPA seeks comments on the following:

- Do the critical components of the web-distributed labeling Web site provide sufficient functionality for users and other stakeholders? Should any optional components be considered critical components?
- Are there other non-critical features of the Web site that EPA has not considered? Please describe their purpose and utility.
- Which Web site hosting approach does your organization support? Why?
- Are any proposed Web site hosting approaches not possible or practical? Why?
- Which potential Web site host is preferable? Why?
- Are there other potential benefits or drawbacks associated with having any of the entities listed above host the web-distributed labeling Web site?

6. Alternative Delivery Mechanism for Labeling. Alternate mechanisms of delivery must be developed to provide pesticide labeling to those users who do not have access to the web and/or the necessary technology to download and print WDL labeling. Alternatives for those without adequate access to the Internet include the alternative delivery mechanisms of faxing and U.S. Mail, alternate electronic mechanisms such as mobile technology, and accessing labeling from alternate locations that may have Internet access, such as the place of purchase, libraries, schools, and county extension offices.

The primary alternate delivery mechanisms the Agency expects to be used are fax on demand and U.S. Mail. Both the faxing and mailing options could be developed in conjunction with a toll-free hotline through which pesticide users could request the necessary labeling. The user would call the toll-free number, provide the state(s) and site(s) of intended use, and request the streamlined labeling via mail or fax. Users would also have the option to request the full product labeling. It is expected that the toll-free hotline number would need the following characteristics or functions to ensure faxing and sending labels via mail are viable alternatives: Nearly 24-hour access; no charge to callers; multilingual capability; non-automation; ability to fax and send via mail; and ability to quickly respond to user requests.

Once the user requests the labeling through the hotline, it needs to be delivered to the user. Faxing the labeling is an option for users who have access to a fax machine. This mechanism seems most feasible for users that apply pesticides in the course of their work, such as commercial pesticide applicators, because this group is more likely to own fax machines. A mechanism accessible by all pesticide users is the U.S. mail. Standard delivery through U.S. Mail should not have any extra costs to the user but expedited delivery could be offered for an additional charge. First class mail takes about 1 to 3 days to get to the recipient, which is in addition to any processing time needed to select, print, and prepare the labeling to be mailed. This processing time needs to be minimized in order to keep this mechanism feasible.

Mobile technology is another possible alternative delivery mechanism because cell phones and other mobile devices may be more accessible for users that do not have access to computers and/or the Internet. However, mobile technology may be limited due to limited network coverage, the size of files that can be downloaded, and slower access speeds. Another issue with mobile technology is that some states may require the users to have a paper copy of the label and it isn't clear if labeling can be printed from these devices. For users in states that do not require the user to have a paper copy of the labeling, delivery of labeling to a smart phone is a feasible alternative to accessing and printing the labeling at a traditional computer.

Some places, such as the place of purchase, libraries, schools, and university extension service offices, may serve as alternate locations to access the Internet and/or fax machines, and thus access web distributed labeling. Access may be limited in some of these locations (*e.g.,* libraries may have slow Internet connection speeds and limited availability of computers and printing, schools may not be accessible to non-students). While EPA recognizes that these locations could be a potential place for users to access web-distributed labeling, the Agency will not rely on the place of purchase, libraries, schools, or university extension services as the primary alternate delivery mechanism for web-distributed labeling.

EPA believes that all of these mechanisms should be explored. At a minimum, faxing and mailing should be implemented as the primary alternate delivery mechanisms for web-distributed labeling, and outreach should be done to ensure that alternate locations are an option for at least some users.

EPA requests stakeholder input on the proposed alternate delivery mechanisms. Please respond to the following:

- Who should administer the alternate delivery mechanisms (maintaining the toll-free hotline, mailing and faxing the labels)?
- Who should pay for administering the toll-free hotline and mailing the web-distributed labeling?
- Are there other feasible alternate delivery mechanisms for web-distributed labeling? Please describe them and how they could be implemented.

7. Outreach and Culture Change. Web-distributed labeling would be a potentially major change for pesticide users. Although many may be familiar with using the Internet, they have not relied on it for pesticide labeling. Users would have to adapt to a new way of obtaining product labeling but regardless of the distribution system employed, their responsibility to obtain and follow all label and labeling instructions would not change. To avoid the increased risk to public health and the environment created if users do not obtain and follow the labeling as required, it would be essential to develop and implement a comprehensive communication plan about web-distributed labeling to educate users and those who conduct training or make pesticide use recommendations.

Outreach regarding the new labeling access method and the required culture changes will need to be multifaceted with different communication messages, timing, and collaborations depending on the stakeholders and target outreach audience. Although it may be necessary to tailor the information to specific audiences, locations and products for the pilot, the underlying issues are the same. A more complete discussion of outreach and communication is available at: *http://epa.gov/pesticides/ppdc/distr-labeling/jan09/ed-culture.pdf.*

Two facets of a successful outreach campaign are a clear, consistent message delivered repeatedly to the user and involving all relevant stakeholders in the outreach effort. The three messages would be:

(1) Web-distributed labeling will replace paper-based labeling on only some products (but not all products) and only in some marketplaces (not home and garden or antimicrobials);

(2) Users still must follow federal and state requirements, including, where applicable, possession of the labeling at the time of application, and comply with all labeling use restrictions and instructions (whether attached, accompanying, or web-distributed labeling); and

(3) There are different ways to obtain web-based labeling: Internet download and the alternate delivery mechanisms, such as fax or mail.

A number of pathways exist that provide information to stakeholders: EPA, registrants, cooperative extension service, state regulatory and enforcement agencies, trade associations, user groups, pesticide dealers and crop advisors, and farm worker advocacy groups. With an understanding of the benefits of a web-distributed labeling system, they would be better equipped to pass the information to the end user. Before implementing any web-distributed labeling program, EPA would work with the stakeholder groups identified above as well as any other interested parties to develop a comprehensive plan for outreach.

EPA plans to work with representatives from the groups listed above in developing a strategy to conduct collaborative outreach in order to ensure that culture change regarding web-distributed labeling occurs in the most effective manner possible. EPA would also work through existing committees, networks, and workgroups, including the Pesticide Program Dialogue Committee, the NAFTA label workgroup, the State-FIFRA Issues Research and Evaluation Group (SFIREG), The Pesticide Stewardship Alliance (TPSA), and the Association of American Pesticide Control Officials (AAPCO). The American Association of Pesticide Safety Educators (AAPSE) will be a critical partner because of its experience in developing educational material and its knowledge of how to

conduct effective outreach into the pesticide user community. The message will be delivered most effectively if responsibility for doing so is shared, because each individual organization has its own expertise, experience and reach into the user community.

Education of users would begin well before implementing a web-distributed labeling system. Those delivering the web-distributed labeling message to users should have an understanding of it and their role as educators and information sources at least 6 months before the pilot begins. EPA recognizes the timing of training will dictate the most effective times to conduct outreach and would plan the initiation of the outreach and education component of web-distributed labeling with this timeframe in mind.

EPA requests comment on the proposed approach to stakeholder outreach and education.

- Are there audiences or partners that have not been identified?
- Are there alternate ways to deliver the message more efficiently or effectively?

8. Enforcement. Under the current system, a user is required to comply with the pesticide product labeling. The requirement for applicators to comply with labeling will not change under web-distributed labeling; as under the existing paper-based system, an applicator's failure to follow the use directions or other labeling language would be a violation of FIFRA § 12(a)(2)(G).

Pesticide labeling is enforced under FIFRA § 12 which lists various unlawful activities. FIFRA § 12(a)(1)(A) declares it unlawful to sell or distribute a pesticide not registered under FIFRA § 3. FIFRA § 12(a)(1)(B) declares it unlawful for any person to distribute or sell a product whose claims differ from those made in connection with its registration. FIFRA § 12(a)(1)(E) declares it unlawful for any person to distribute or sell a misbranded product as defined in § 2(q). FIFRA § 12(a)(2)(A) declares it unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under the Act. FIFRA § 12(a)(2)(G) declares it unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling. FIFRA § 12(a)(2)(H) declares it unlawful for any person to use any pesticide which is under an experimental use permit contrary to the provisions of such permit. FIFRA §§ 13 and 14 describe the actions the Agency may take in response to violations of the Act.

Web-distributed labeling would mean a change in the way labeling is delivered, but not in the way it is enforced. Enforcement of FIFRA and EPA's regulations is necessary to ensure that pesticides continue to be used according to labeling requirements. This section explores how implementation of a WDL system would affect the legal responsibilities of users and registrants, users, and distributors to comply with FIFRA. Further discussion is available at: *http://epa.gov/pesticides/ppdc/distr-labeling/june09/enforcement-paper.pdf.*

i. Registrants. States have primary enforcement authority for pesticide use violations. EPA generally pursues violations of the FIFRA's labeling requirements. Compliance monitoring would be a joint federal-state effort to monitor labels in the marketplace and ensure that applicators are using and following current and appropriate labels when applying pesticides. This approach would not be altered by a web-distributed labeling system.

Registrants are ultimately responsible for ensuring that the label affixed to or accompanying a product when it is released into channels of trade is current and accurate. Although the registrant may enter into contracts with other parties acting as the registrant's agent to produce or label products, the registrant is still ultimately responsible for the labeling of the product. Under a web-distributed labeling scenario, the registrant would be responsible for ensuring that current and accurate labeling is available for users to obtain. By listing a Web site address on the label, the registrant would take responsibility for the content of the Web site concerning that product. There are a number of alternative methods that have been proposed for distribution of labeling, including fax-on-demand services or toll-free telephone lines to request a copy of the label. Regardless of how the user obtains the label, the registrant would be responsible for the labeling content delivered to the user.

The registrant would be responsible for providing a legally valid label to the user. There may be instances where a registrant contracts with a third party to provide labeling to users under a web-distributed labeling system. Transferring this duty from the registrant to the third party Web site host does not absolve the registrant of its ultimate responsibility. The Agency may also find the registrant liable for violations of FIFRA regarding the Web site's operations and content. FIFRA § 14(b)(4) provides that the act, omission, or failure of any officer, agent, or other person (*e.g.,* a Web site host) acting for or employed by any person regulated by FIFRA (*e.g.,* a registrant) shall be deemed to be the act, omission, or failure of such person (a registrant) as well as that of the person employed (the host). The Agency is considering whether registrants seeking to use web-distributed labeling for their products should be required to submit, as part of the pesticide's registration under FIFRA, documentation of their contractual arrangements with Web site operators. Such a requirement would serve many purposes including the following:

(1) it will encourage registrants to enter into contractual agreements with reputable Web site operators; and

(2) it will expedite federal and state compliance monitoring efforts.

ii. Users. Pesticide users are responsible for applying the product in accordance with the restrictions and directions in pesticide product labeling. The provisions of a product's labeling are generally enforceable, and violations of a product's labeling are punishable by civil or criminal penalties under FIFRA § 14. A user's responsibility to follow labeling instructions, and the consequences of not doing so, would not change under web-distributed labeling.

Under web-distributed labeling, the container's label will require the user to possess the labeling referenced on the pesticide container (i.e., directions for use) prior to mixing, loading, or applying the pesticide. Failure to possess the directions for use as required by the container's label will constitute misuse of the pesticide product and violate FIFRA § 12(a)(2)(G). There is an issue with respect to what actions by a user would constitute having an appropriate copy of the labeling in his possession. EPA would regard having either a paper copy of the downloaded labeling or an electronic file as meeting the requirement to have a copy of the labeling but state requirements may be different. Further, if the user had multiple containers of the same product, he would need to have only one copy (paper or electronic) of the labeling for that product. State laws may differ and may require hard copies.

The container's label will also require the user to follow the web-distributed labeling. Failure to follow the use directions or other requirements contained in the web-distributed labeling violates FIFRA § 12(a)(2)(G). FIFRA is a strict liability statute. Thus, if the user obtains an incorrect version of the labeling and applies the pesticide consistent with the incorrect directions, it may be a violation of FIFRA § 12(a)(2)(G) because the application was not made consistent with the *approved* labeling. The user may be able to argue as an affirmative defense the correctness and accuracy of the downloaded labeling or that they

followed the correct process to retrieve the correct labeling but nonetheless received the incorrect labeling.

A user could not use the unavailability of a Web site as a reason for not obtaining a copy of the web-distributed labeling because the container label will provide at least one alternative method of obtaining a copy of the labeling. EPA would expect the user to employ the alternative method in case the Web site was not available before mixing, loading or applying the pesticide.

iii. Pesticide Dealers & Other Distributors. Currently, dealers and other distributors of pesticides are also responsible for ensuring that the registered pesticides they sell or distribute have their complete labeling. If the labeling is incomplete the pesticide may be misbranded, and it is a violation of FIFRA § 12(a)(1)(E) to sell or distribute a misbranded pesticide. However, Congress intended to allow any person who violates FIFRA § 12(a)(1)(E) to shift his or her liability to the registrant from whom the person purchased or received the pesticide if that person holds a "guaranty" in writing from the registrant. FIFRA § 12(b)(1). A guaranty is a written agreement between the dealer or distributor and the registrant or other person who sells the pesticide to the dealer or distributor, and notes that the pesticide was lawfully registered at the time of the sale and that it complies with all requirements of FIFRA. The guaranty transfers liability for any violations associated with labeling or misbranding from the dealer or distributor to the registrant or other person who provided the pesticide. The FIFRA guaranty provision would not be affected by web-distributed labeling.

Dealers and distributors may elect under the current system to provide parts of EPA-approved labeling for a product to their customers when they sell or distribute a registered pesticide. Such accompanying material must travel with the pesticide product from a registered establishment where the product was produced. 40 CFR 167.3 defines "produce," in part, as "to package, repackage, label, relabel or otherwise change the container of the any pesticide or device." Further, 40 CFR 167.20 requires establishments where pesticidal products are produced to be registered with EPA. Since the container would bear an affixed label when dealers and distributors receive it, they would not be relabeling the product; therefore, they would not be considered producers and not required to register as establishments.

Under web-distributed labeling, there would be no requirement for dealers and distributors to register as establishments that "produce" pesticidal products because the web-distributed labeling is tied to the product by reference, and thus part of the labeling. As long as the dealer or other distributor provides the purchaser with all of the labeling required to accompany the pesticide container, the dealer or other distributor of the pesticide would not be in violation of FIFRA. Dealers may, as a service to their customers, provide the means for a user to obtain labeling through an Internet connection whereby the customer can download the labeling for the product he just purchased. Offering this service does not make the dealer liable for the failure of the user to obtain the proper labeling, nor does providing the means for obtaining labeling make the dealer's facility a production facility and subject to establishment registration. In sum, dealers would need to meet the same state and federal requirements for selling pesticides to which they are now subject.

Under current law dealers and other distributors of pesticides may elect to provide parts of the EPA-approved labeling for a product to their customers when they sell or distribute a registered pesticide. Such accompanying material must travel with the pesticide product from a registered establishment where the product was produced.

EPA seeks comments from stakeholders on the potential enforcement of web-distributed labeling, specifically on:

- Would states be able to enforce web-distributed labeling under their current laws and regulations?
- Are there potential areas of enforcement that the Agency has not considered?
- Do users, states, registrants, or other stakeholders think that enforcement would be significantly different under web-distributed labeling? If so, please provide an explanation of how.

V. Issues

A. User Access

It is necessary to ensure that all users can access web-distributed labeling in order to assure that they have the information needed to use pesticides safely and effectively. EPA would not implement web-distributed labeling if users were unable to access labeling and as a result did not comply with labeling directions during application.

While broadband penetration is expanding across the United States, especially in rural communities, not all users have internet access or the ability to download and print large files. A 2009 survey conducted by the United States Department of Agriculture found that 59 percent of farms in the United States had internet access. Internet access varies by geographic location and farm size. See *http://usda.mannlib.cornell.edu/usda/current/FarmComp/FarmComp-08-14-2009.pdf.* To ensure that all pesticide users are able to access the labeling, EPA will make labeling available either electronically or through an alternate delivery mechanism. However, EPA expects that as broadband penetration increases, users' reliance on the alternate delivery mechanism for web-distributed labeling would decrease.

EPA will continue to monitor internet and computer access in rural communities. To ensure that no system is implemented that would compromise access to and thus compliance with labeling, EPA plans to conduct several pilots related to web-distributed labeling (*see* Unit VI.). The pilots will evaluate users' potential to access the internet to download web-distributed labeling and the feasibility of alternate delivery mechanisms.

EPA requests comments on the following:

- Are there other ways to reach pesticide users that do not have internet access other than those considered by EPA?
- What types of outreach should EPA and other stakeholders do to ensure that all pesticide users understand and could use web-distributed labeling, regardless of internet access?

B. User Acceptance/Outreach

Product labeling is the primary mechanism used by EPA to communicate critical information to the pesticide user. The labeling contains use directions, health and safety information, and instructions for proper disposal, as well as other important information. Both FIFRA and pesticide labeling regulations assume that users follow the use directions on the label and labeling for registered products; users that do not comply with labeling are subject to penalties for non-compliance. To protect human health and the environment from the risks associated with pesticide misuse or misapplication, it is of the utmost importance that pesticide users follow labeling instructions.

Implementation of web-distributed labeling would have to ensure that risks to the public and the environment are not increased by users' failure to download and follow the pesticide labeling. EPA would not move forward

with web-distributed labeling if EPA were to conclude that the system is unlikely to enhance users' understanding and following of pesticide labeling. To gauge user acceptance and to ensure that the web-distributed system is designed to be as user-friendly and functional as possible, the Agency is developing a pilot as described in Unit VI.

EPA requests comments on the following:

- Is there data on professional pesticide users' reading and understanding of the label under the current paper-based system?
- In addition to doing a pilot to gauge user acceptance of the concept of web-distributed labeling and potentially doing a field-level pilot, what else could EPA do to measure users' acceptance of the concept and likelihood of downloading the labeling from a Web site?

C. State Acceptance

As discussed in Unit II.A.2., state registration of pesticide products varies widely. Since users are required to comply with the marketed labeling registered by states, it is essential that states are actively involved in the development of a web-distributed labeling system. To move forward with web-distributed labeling, EPA will need the support of all states. EPA has been working with both state lead agencies for pesticide regulation and cooperative extension services to get feedback from these stakeholders. The primary concerns of states are ensuring the enforceability of web-distributed labeling and not being required to significantly alter their registration systems.

A web-distributed labeling system would not require every state to adopt the same registration system. States could continue to use their existing registration systems, receiving the marketed labeling either electronically or as a hard copy from registrants. EPA anticipates that registrants would be responsible for entering the approved marketed labeling into the database(s) for the web-distributed labeling system, meaning no increased burden for review and approval of products in a state.

EPA also recognizes that coordination with states and registrants would be necessary to implement web-distributed labeling. If a company chooses to participate in web-distributed labeling, both the state and the registrant would need to understand the process and the format of the approved labeling. States would need to notify registrants how the approval process would work to ensure that the labeling posted to and retrieved from the web-distributed labeling system would be valid.

The Agency will continue to work with states through the Association of American Pesticide Control Officials (AAPCO) and the State-FIFRA Issues Research and Evaluation Group (SFIREG) to ensure their concerns are addressed in the development and implementation of web-distributed labeling.

EPA seeks comments on the following:

- What are specific areas in which web-distributed labeling could affect state programs?
- What would be the impact of web-distributed labeling on state programs?
- How could EPA satisfactorily address concerns about the effect of web-distributed labeling on state programs?

D. Registrant Liability

In the PPDC Workgroup on web-distributed labeling, a number of stakeholders voiced a concern that implementing a system of web-based distribution of pesticide labeling could change the potential tort liability of registrants. "Tort liability" refers broadly to the body of law for establishing rights and remedies in non-criminal lawsuits to provide relief for persons who have suffered injury because of the wrongful acts of others. This area of the law addresses a wide variety of "civil wrongs" (referred to as "torts"), not arising out of contractual obligations. Although the legal principles governing tort liability are quite extensive and sometimes complex, the basic framework is fairly simple. If one person has been harmed by the behavior of another, the injured party may bring a lawsuit against the person who allegedly caused the injury in order to recover damages. If a judge or jury finds that the defendant's behavior caused the damage and that the behavior was "negligent," i.e., did not meet the relevant standard of care, the defendant normally could be found liable for damages caused. Negligence can occur in many different situations and can involve many different types of behavior. Whether a particular person's behavior constitutes "negligence" typically is determined on a case-by-case basis. When dealing with the sale of products, negligence claims can involve making a defective product (one that does not work as claimed), or failing to provide adequate instructions or warnings so that the user can use the product without injury.

The Agency asked participants in the PPDC Workgroup to explore the impact on registrants' potential tort liability of a web-based system of distributing labeling. In response several work group members collaborated on the preparation of an issue paper, "Liability Concerns Associated with Web-Distributed Labeling," which is available at: *http://www.epa.gov/pesticides/ppdc/distr-labeling/sept09/liabilityissues.pdf.* In addition to tort liability, the PPDC issue paper discusses a number of other topics. One was registrants', dealers', and users' liability for violations of FIFRA and associated state regulatory requirements. Unit III.C.8. deals with enforcement of FIFRA requirements, and addresses the aspects of the paper dealing with liability for regulatory violations.

The PPDC paper also identified unsettled legal issues concerning the scope of state authority to regulate pesticides, in particular whether a state has the authority to refuse to approve or register a product, therefore effectively prohibiting its sale, if the State did not consider the EPA-approved pesticide labeling adequate. Whatever the merits of the competing views of the legal issue might be, EPA believes that a decision to allow a registrant to use a web-distributed labeling system would not affect the scope of states' authority to regulate pesticides within their borders. States would have no greater or less authority to refuse to approve a pesticide using web-distributed labeling than they have to refuse to register pesticides under the current system. (EPA takes no position in this notice on the extent of State authority to refuse to register a pesticide and what reasons, if any, would be legally sufficient.)

Finally, with respect to tort liability, the PPDC paper raised several questions but did not suggest possible answers. The PPDC paper did not contain sufficient explanation for EPA to understand the basis for concern that a voluntary, web-distributed labeling approach might increase the risk of successful tort liability lawsuits against registrants, much less what steps EPA or others might take to minimize any such risk. Consequently, EPA asked the authors to revise and expand the paper using examples to illustrate how a web-distributed labeling, approved by EPA, could affect registrants' potential tort liability. EPA has not received a new version of the issue paper.

Because the legal authority, registration processes, and requirements for users to follow all pesticide labeling are the same under web-distributed labeling as they are under the current system, EPA does not believe that web-distributed labeling will introduce additional tort liability to pesticide manufacturers or distributors.

EPA requests comments on the following:

- Would a decision to adopt a system of web-based distribution of pesticide labeling affect the potential tort liability of registrants? As part of the comment, please describe the legal theory for potential negligence and how web-distributed labeling affects the likelihood of successful tort claims against a registrant, especially as compared with the current paper-based system of distributing labeling.
- What steps might EPA take to evaluate whether the extent of compliance with pesticide labeling increases, decreases, or does not change when comparing pesticide users who buy products using web-distributed labeling vs. users of products following the current system?
- To what extent could a system of web-distributed labeling affect the authority of a state to regulate pesticides?

VI. Next Steps

This section presents EPA's thoughts on the next steps for exploring the concept of web-distributed labeling. In addition to continuing its outreach efforts with stakeholders and considering feedback on this **Federal Register** Notice, EPA intends to conduct a User Acceptance Pilot. Based on the feedback gathered during the User Acceptance Pilot and from this notice, a Virtual Pilot and Limited Field Pilot may be developed.

A. Customer Acceptance Pilot

The User Acceptance Pilot would simulate the web-distributed labeling experience using a real Web site, which would be capable of providing web-distributed labeling for a limited number of pesticide products. The labeling downloaded from this Web site would not be valid for purposes of authorizing a user to apply the products involved. The users would go through the following steps:

1. Log onto an Internet-accessible Web site.
2. Enter a product registration number or other product identifier for one of several pre-determined products.
3. Select the relevant state/county in which the mock pesticide application would take place.
4. Select the relevant use pattern(s) for the mock pesticide application to filter the labeling according to use pattern(s).
5. View and download from the Web site the labeling appropriate for the identified product, use pattern, and state provided.

In addition, the pilot Web sites would:

1. Place a prominent statement on each page of the downloaded labeling making it clear that the labeling downloaded from the Web site(s) was not legally valid for purposes of making a pesticide application.
2. Offer users a mechanism for providing feedback on the web-distributed labeling experience.

The purpose of the User Acceptance Pilot is to research the extent to which users would accept a system requiring them to obtain labeling via the Internet. The specific goal of the pilot is to determine whether the benefits of web-distributed labeling would be sufficiently appealing to users that they would be willing to visit a Web site to obtain labeling for a pesticide product. The pilot would demonstrate how users could access labeling information using the Web site and would not involve the actual distribution to users of actual pesticide product labeling that would rely on the web-distributed labeling approach.

The results of this research are important for EPA in deciding whether and how to move ahead with further efforts to develop such a system. Consequently, the Agency not only expects participants in the Pilot to offer users a mechanism for providing feedback on the web-distributed labeling experience, but also encourages participants to summarize and submit to EPA the feedback obtained through the pilot. EPA hopes to receive information on users' opinions about paper labels, the web-distributed labeling Web site experience, web-distributed labeling overall, and other potential features of web-distributed labeling.

More information on the User Acceptance Pilot is available at *http://www.gpo.gov/fdsys/pkg/FR-2010-08-18/pdf/2010-20449.pdf.*

B. Review of Public Comments on Federal Register Notice

EPA is using this notice to solicit comments and suggestions from stakeholders and the public on the concept of web-distributed labeling. EPA will review comments as they are submitted and will present the information received to interested parties. EPA plans to incorporate feedback received through this notice into the development of the planned pilots and in refining the concept of web-distributed labeling.

EPA intends to continue communicating with WDL stakeholders to provide updates and gather feedback as it moves closer to implementing WDL. In addition to addressing comments received in response to this and other WDL **Federal Register** Notices, EPA will continue to provide updates on the EPA Web site, meet with and encourage the submission of information from stakeholders, and gather and respond to informal comments received on the User Acceptance Pilot and Virtual Pilot described above.

C. Virtual Pilot

The Virtual Pilot would demonstrate the actual functionality of web-distributed labeling through the creation of an actual Web site and supporting database(s). The goals of the pilot would be to assess whether the Web site works properly for registrants, EPA, states, and users. The objectives, scope, assumptions, and program assessment are discussed in a paper at *http://epa.gov/pesticides/ppdc/distr-labeling/sept09/wdl-virtualpilot.pdf.* This pilot could be conducted in conjunction with the Limited Field Pilot discussed in Section D below.

D. Limited Field Pilot

The Limited Field Pilot would implement web-distributed labeling on a trial basis, in a limited geographical area and with a small number of products. The Limited Field Pilot would be informed by the findings of the Customer Acceptance Pilot and comments on this **Federal Register** Notice. Users in areas participating in the Limited Field Pilot would only be able to obtain the full labeling for a participating product using web-distributed labeling. Containers would bear a limited set of the labeling (*see* Unit III.C.3). Since the Limited Field Pilot depends heavily on the feedback received from stakeholders, the concept will not be developed substantially until the other pilots have been completed.

VII. Conclusion

After extensive stakeholder feedback and refinement of the concept, EPA believes that web-distributed labeling would be beneficial to users, registrants, states, other stakeholders and the Agency. Stakeholders would benefit from faster implementation of risk mitigation and new uses, faster access to new uses, reduced printing costs, and streamlined labeling. Since labeling is the critical component that allows EPA to communicate use and safety instructions to users, an initiative to make the labeling streamlined, and easier to read and understand could lead to increased compliance and therefore improved protection of human health and the environment. EPA recognizes that issues exist with implementation of a web-distributed labeling system. However, given the

potential benefits, EPA plans to move forward to pilot some of these concepts and to address outstanding questions. The Agency will continue to engage all stakeholders in the consideration of this ambitious system.

List of Subjects

Environmental protection, electronic pesticide labeling, pesticide distribution, pesticide labeling, pesticide production, pesticide regulation, pesticide user, state pesticide regulation.

Dated: December 13, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2010–32036 Filed 12–28–10; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 75 FR 80810, Thursday, December 23, 2010.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, December 29, 2010, 10 a.m. (Eastern Time).

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: December 27, 2010.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 2010–32962 Filed 12–27–10; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011922–003.

Title: TNWA/GA Cooperative Working Agreement.

Parties: American President Lines, Ltd.; APL Co., Pte. Ltd; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line (Europe) Limited; Orient Overseas Container Line, Inc. Orient Overseas Container Line, Inc.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment updates the corporate addresses of APL and Hyundai.

Agreement No.: 011928–005.

Title: Maersk Line/HLAG Slot Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Hapag-Lloyd AG.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would revise the language to reflect changes in allocations due to added tonnage in the service and would extend the duration of the agreement.

Agreement No.: 012034–002.

Title: Hamburg Sud/Maersk Line Vessel Sharing Agreement.

Parties: Hamburg-Sud and A.P. Moeller-Maersk A/S.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would revise the number of vessels deployed and would make corresponding operational changes in services under the agreement.

Agreement No.: 012057–005.

Title: CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Asia to USEC and PNW-Suez/PNW & Panama Loops.

Parties: A.P. Moller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment increases the number and size of vessels to be deployed under the agreement, revises the space allocations of the parties, and deletes obsolete language from the agreement.

Agreement No.: 012115.

Title: HSDG–CCNI USWC-Europe Vessel Sharing Agreement.

Parties: Compania Chilena De Navegacion Interoceanica, S.A. and Hamburg Sud.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes the parties to share vessels in the trade between the U.S. West Coast and ports on the Pacific Coasts of Mexico, Canada and Central America, Caribbean Coasts of Panama, Colombia, ports in Continental Europe, United Kingdom and North Africa.

By Order of the Federal Maritime Commission.

Dated: December 23, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–32804 Filed 12–28–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Grupo Financiero Banorte, S.A.B. de C.V., Mexico City, Mexico; to acquire 100 percent of the voting shares of Ixe Grupo Financiero, S.A.B. de C.V., Cuauhtemoc, Mexico, and indirectly acquire voting shares of Ixe Securities, LLC, New York, New York, and thereby engage in securities brokerage activities, pursuant to section 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–32652 Filed 12–28–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
06–DEC–10	20110047	G	Danaher Corporation.
		G	Keithley Investment Company Limited Partnership.
		G	Keithley Instruments, Inc.
	20110222	G	Cubic Corporation.
		G	Richard Hollis Helms.
		G	Abraxas Corporation.
07–DEC–10	20110254	G	Nordic Capital Fund V Ltd.
		G	Dan Richardson.
		G	Care Ambulance Service, Inc.
	20110255	G	Nordic Capital Fund V Ltd.
		G	Rick Richardson.
		G	Care Ambulance Service, Inc.
	20110281	G	Regal Beloit Corporation.
		G	Unico, Inc.
		G	Unico, Inc.
	20110283	G	Energy Capital Partners II–A, LP.
		G	Milford Holdings LLC.
		G	Milford Holdings Corporation.
		G	Milford Power Company, LLC.
	20110285	G	TA XI L.P.
		G	Theodore R. Casey.
		G	Dymatize Enterprises, Inc.
	20110292	G	NC VII Limited.
		G	Carlyle Europe Partners II, L.P.
		G	Britax Childcare Holdings Limited.
	20110299	G	West Rim Capital Partners II, L.P.
		G	Kevin R. Elder.
		G	Cell Adjustment, LLC.
		G	Cell Brokerage, LLC.
		G	Go Wireless, Inc.
	20110300	G	AGS Acquisition Co.
		G	Advantage Sales & Marketing Holdings, LLC.
		G	ASM Intermediate Holdings Corp. II.
	20110301	G	Berkshire Fund VII, L.P.
		G	Metalmark Capital Partners, L.P.
		G	MD Investment Holdings, Inc.
		G	Melissa & Doug, LLC.
	20110313	G	News Corporation.
		G	Wireless Generation, Inc.
		G	Wireless Generation, Inc.
08–DEC–10	20110272	G	Juniper Networks, Inc.
		G	Belden Inc.
		G	Trapeze Networks, Inc.
	20110302	G	Donata Holding SE.
		G	Miriam Schaeffer.
		G	OPI Products Inc.
	20110306	G	Zensar Technologies, Ltd.
		G	PSI Holding Group, Inc.
		G	PSI Holding Group, Inc.
10–DEC–10	20110284	G	Hudson Clean Energy Partners, L.P.
		G	SoloPower, Inc.
		G	SoloPower, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	20110310	G	Chevron Corporation.
		G	Atlas Energy, Inc.
		G	Atlas Energy, Inc.
	20110316	G	Christopher E. MacAllister.
		G	Jerrold M. Jung.
		G	Michigan Tractor and Machinery Company, Inc.
	20110332	G	Riverstone/Carlyle Global Energy and Power Fund IV(FT), L.P.
		G	USA Compression Holdings, LP.
		G	USA Compression Holdings, LP.
	20110345	G	Primus Capital Fund VI, LP.
		G	Vendormate, Incorporated.
		G	Vendormate, Incorporated.
	20110347	G	Grey Mountain Partners Fund II, L.P.
		G	Philippe Delouvrier.
		G	Industrial Insulation Group, LLC.
	20110349	G	Endeavour Capital Fund V, L.P.
		G	Craig Hill 1991 Revocable Trust.
		G	Nor-Cal Products, Inc.
	20110350	G	Graeme R. Hart.
		G	Carlyle Partners III, L.P.
		G	UCI International, Inc.
	20110355	G	Norfolk Southern Corporation.
		G	DTE Energy Company.
		G	Belle River Fuels Company, LLC.
	20110364	G	ABRY Partners VI, L.P.
		G	TWCP, L.P.
		G	TSI Holding Co., Inc.
13–DEC–10	20110144	G	PeaceHealth.
		G	Southwest Washington Health System.
		G	Southwest Washington Medical Center.
		G	Southwest Washington Medical Center Foundation.
	20110227	G	Texas Health Resources.
		G	PhyServe Holdings Inc.
		G	PhyServe Holdings Inc.
	20110231	G	Texas Health Resources.
		G	Clay Heighten, M.D.
		G	Medical Edge Healthcare Group, P.A.
	20110336	G	Everest Re Group, Ltd.
		G	Michael A. Miller.
		G	Heartland Crop Insurance, Inc.
	20110338	G	Brynwood Partners VI L.P.
		G	The Procter & Gamble Company.
		G	The Procter & Gamble Company.
	20110344	G	Oak Hill Capital Partners III, L.P.
		G	Friedman Fleischer & Lowe Capital Partners II, L.P.
		G	Guardian Home Care Holdings, Inc.
	20110370	G	The 2001 Wasserstein Family Trust.
		G	Ascent Media Corporation.
		G	Ascent Media Network Services Europe Limited.
		G	Ascent Media Network Services, LLC.
		G	Ascent Media Pte. Ltd.
14–DEC–10	20110238	G	Dabur India Limited.
		G	Gary E. Gardner.
		G	Namaste Laboratories, L.L.C.
	20110252	G	Energy XXI (Bermuda) Limited.
		G	Exxon Mobil Corporation.
		G	Mobile Eugene Island Pipeline Company.
		G	Exxon Mobil Pipeline Company.
		G	Mobil Oil Exploration & Producing Southeast Inc.
	20110256	G	Humana Inc.
		G	Welsh, Carson, Anderson & Stowe VIII, L.P.
		G	Concentra Inc.
	20110271	G	Li & Fung Limited.
		G	Oxford Industries, Inc.
		G	Oxford Industries, Inc.
	20110287	G	Donata Holding SE.
		G	Carlyle Partners IV, L.P.
		G	Philosophy Acquisition Company, Inc.
	20110291	G	Chicago Growth Partners II, L.P.
		G	Excellere Capital Management LLC.
		G	Advanced Pain Management Holdings, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	20110312	G	ABRY Partners VI, L.P.
		G	Odyssey Investment Partners Fund III, LP.
		G	York Insurance Holdings, Inc.
	20110317	G	Water Street Healthcare Partners II, L.P.
		G	Johnson & Johnson.
		G	OraPharma, Inc.
	20110368	G	H.I.G. Bayside Debt & LBO Fund II, L.P.
		G	The Estate of Robert H. Brooks.
		G	Hooters of America, Inc.
	20110369	G	New York Life Insurance Company.
		G	Louis W. Moelchert, III GST Trust.
		G	Private Advisors, L.L.C.
15–DEC–10	20110201	G	Hercules Holdings II, LLC.
		G	MedCath Corporation.
		G	Heart Hospital of San Antonio, L.P.
	20110225	G	Jarden Corporation.
		G	Avenia AG.
		G	Quickie Holdings, Inc.
	20110307	G	Sigma-Aldrich Corporation.
		G	Cerilliant Corporation.
		G	Cerilliant Corporation.
	20110342	G	Methodist Healthcare Ministries of South Texas, Inc.
		G	MedCath Corporation.
		G	Heart Hospital of San Antonio, L.P.
16–DEC–10	20110077	G	Gavilon SuperHoldco, LLC.
		G	Paul E. DeBruce.
		G	DeBruce Grain, Inc.
	20110245	G	Cardinal Health, Inc.
		G	Stewart J. Rahr.
		G	Kinray, Inc.
	20110257	G	Platte River Ventures I, L.P.
		G	Mark Severns.
		G	Quality Forming, Inc.
	20110362	G	Carl C. Icahn.
		G	Reorganized MGM Holdings Inc.
		G	Reorganized MGM Holdings Inc.
	20110366	G	Reyes Holdings, L.L.C.
		G	Consolidated Companies, Inc.
		G	Consolidated Companies, Inc.
	20110309	G	Dayton-Cox Trust A.
		G	Jesse Biter.
		G	HomeNet Automotive, LLC.
		G	HomeNet, Inc.
	20110371	G	Addison Avenue Federal Credit Union.
		G	First Technology Credit Union.
		G	First Technology Credit Union.
	20110374	G	Lincolnshire Equity Fund IV, L.P.
		G	Ronald and Joan Beeman.
		G	Eddy Packing Company, Inc.
	20110382	G	Palladium Equity Partners III, L.P.
		G	Jordan Healthcare Holdings, Inc.
		G	Jordan Healthcare Holdings, Inc.
	20110388	G	Uni-Select Inc.
		G	LDI Ltd., LLC.
		G	FinishMaster, Inc.
	20110400	G	Water Street Healthcare Partners, L.P.
		G	Adam F. Press.
		G	The St. John Companies, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–32716 Filed 12–28–10; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket 2010–0002; Sequence 15]

General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Form 1217, Lessor's Annual Cost Statement

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of Request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Lessor's Annual Cost Statement. A request for public comments was published in the **Federal Register** at 74 FR 63704, on December 4, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 28, 2011.

ADDRESSES: Submit comments identified by Information Collection 3090–00xx, Lessor's Annual Cost Statement by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–00xx, Lessor's Annual Cost Statement" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–00xx, Lessor's Annual Cost Statement". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–00xx, Lessor's Annual Cost Statement" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 1st Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–00xx.

Instructions: Please submit comments only and cite Information Collection 3090–00xx, Lessor's Annual Cost Statement, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lague, Procurement Analyst, Contract Policy Branch, at telephone (202) 694–8149 or via e-mail to *deborah.lague@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the proposed GSAR 570.802(d), the GSA Form 1217 is used to obtain information about operating expenses for property being offered for lease to house Federal agencies. These expenses are normally included in the rental payments we make to lessors. The form also provides an equitable way to compare lessor proposals, and it provides costs of building expenses that can be negotiated to obtain fair and reasonable prices.

B. Annual Reporting Burden

Respondents: 5,733.
Responses per Respondent: 1.
Annual Responses: 5,733.
Hours per Response: 1.
Total Burden Hours: 5,733.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 1st Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, Lessor's Annual Cost Statement, in all correspondence.

Dated: December 23, 2010.

Millisa Gary,

Acting Director, Acquisition Policy Division.

[FR Doc. 2010–32775 Filed 12–28–10; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 11–03; Docket 2010–0003; Sequence 6]

Privately Owned Vehicle Mileage Reimbursement Rates

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of FTR Bulletin 11–03, Calendar Year (CY) 2011 Privately Owned Vehicle Mileage Reimbursement Rates.

SUMMARY: The General Services Administration's (GSA) annual privately owned vehicle (POV) mileage reimbursement rate reviews have resulted in new CY 2011 rates for the use of privately owned automobiles (POA), POAs when Government owned automobiles (GOA) are authorized, and motorcycles for official purposes. No change resulted for the use of privately owned airplanes. FTR Bulletin 11–03 establishes these new CY 2011 mileage reimbursement rates, pursuant to the process discussed below. This notice of subject bulletin is the only notification of revisions to the POV rates to agencies other than the changes posted on the GSA website. GSA determines these rates by reviewing the annual standard automobile study conducted by the Internal Revenue Service, as well as conducting motorcycle and aircraft studies, and/or by applying consumer price index data.

DATES: This notice is effective upon the date of publication and applies to travel performed on or after January 1, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Mr. Cy Greenidge, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management, at (202) 219–2349, or by e-mail at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 11–03.

SUPPLEMENTARY INFORMATION:

Change in Standard Procedure

GSA posts the POV mileage reimbursement rates, formerly published in 41 CFR Chapter 301, solely

on the Internet at *http://www.gsa.gov/ftr.* This process, implemented in FTR Amendment 2010–07 (75 FR 72965, Nov. 29, 2010), ensures more timely updates in mileage reimbursement rates by GSA for Federal employees on official travel. Notices published periodically in the **Federal Register,** such as this one, and the changes posted on the GSA Web site, now constitute the only notification of revisions to privately owned vehicle reimbursement rates for Federal agencies.

Dated: December 21, 2010.

Janet Dobbs,

Acting Deputy Associate Administrator.

[FR Doc. 2010–32773 Filed 12–28–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), NCHS announces the following meeting of the aforementioned committee:

Times and Dates: 11 a.m.–5:30 p.m., January 27, 2011. 8:30 a.m.–2 p.m., January 28, 2011.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. Pre-approval is required for foreign nationals or non-US citizens. Please contact Althelia Harris, 301–458–4261, *adw1@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements. All visitors are required to present a valid form of picture identification issued by a State, Federal or international government. The meeting room accommodates approximately 100 people.

Purpose: This committee provides advice and makes recommendations to the Secretary, HHS; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be Discussed: The agenda will include welcome remarks by the Director, NCHS; an update on the Health Indicators Warehouse; an update on program reviews; and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced typedpages in length and must be received by January 21, 2011.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, PhD, Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7211, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and othercommittee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: December 21, 2010.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–32747 Filed 12–28–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0640]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data to Support Food and Nutrition Product Communications, as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a generic clearance to collect information to support communications about nutrition and food products regulated by FDA. This data collection will gauge, informally, public opinion on a variety of subjects related to consumer, patient, or health care professional perceptions and use of nutrition and food products and related materials, including but not limited to, food advertising, food and nutrition labeling, emerging risk communications, online sales of food products, and consumer and professional education.

DATES: Submit either electronic or written comments on the collection of information by February 28, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Data to Support Food and Nutrition Product Communications, as Used by the Food and Drug Administration—21 U.S.C. 393(d)(2)(D) (OMB Control Number 0910–NEW)

FDA plans to use the data collected under this generic clearance to inform its nutrition and foods communications campaigns. FDA expects the data to guide the formulation of its food and nutrition communication objectives. FDA also plans to use the data to help tailor print, broadcast, and use electronic media communications in order for them to have powerful and desired impacts on target audiences. The data will not be used for the purposes of making policy or regulatory decisions.

The information collected will serve two major purposes. First, as formative research, it will provide the critical knowledge needed about target audiences. FDA must explore audiences' beliefs, perceptions, and decisionmaking processes about nutrition and food consumption in order to formulate the basic objectives of its risk communication campaigns. Such knowledge will provide the needed target audience understanding to design effective communication strategies, messages, and product labels. These communications will aim to improve public understanding of the risks and benefits of consuming certain foods or nutritional products by providing users with a better context in which to place risk information more completely.

Second, as initial testing, it will give FDA some information about the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents may be asked to give their reaction to the messages in individual or group settings.

FDA's Center of Food Safety and Applied Nutrition, Office of the Commissioner, and other Centers or Offices will use this mechanism to test messages about regulated food and nutrition products on a variety of subjects related to consumer, patient, or health care professional perceptions and use of foods and related materials, including but not limited to, food advertising, food and nutrition labeling, emerging risk communications, online sales of food products, and consumer and professional education. The data will not be used for the purposes of making policy or regulatory decisions.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Individual indepth interviews	360	1	360	0.75	270
General public focus group interviews	144	1	144	1.5	216
Intercept interviews: central location	600	1	600	0.25	150
Intercept interviews: telephone	10,000 [2]	1	10,000	0.08	800
Self-administered surveys	2,400	1	2,400	0.25	600
Gatekeeper reviews	400	1	400	0.50	200
Omnibus surveys	2,400	1	2,400	0.17	408
Total (general public)	16,304	.....	16,304	.....	2,644
Total physician focus group interviews	144	1	144	1.5	216
Total (overall)	.....	.....	.....	.....	2,860

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Brief interviews with callers to test messages, concepts and strategies following their call-in request to an FDA Center 1–800 number.

Annually, FDA projects about 30 communication studies using the variety of test methods listed in table 1. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

Dated: December 22, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–32739 Filed 12–28–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs 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 March 8, 2011, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room, (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm*; under the heading "Resources for You," click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings." Please note that visitors to the White Oak Campus must enter through Bldg 1.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 31, rm. 2417, Silver Spring,

MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *kristine.khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. 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 March 8, 2011, the committee will discuss new drug application (NDA) 022–383, indacaterol maleate (ARCAPTA NEOHALER), by Novartis Pharmaceuticals Corp., for the long-term once daily maintenance bronchodilator treatment of airflow obstruction in patients with chronic obstructive pulmonary disease, including chronic bronchitis and/or emphysema.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 22, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those individuals interested in making 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 February 11, 2011. 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 February 14, 2011.

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 Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–32735 Filed 12–28–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White HIV/AIDS Program Allocation and Expenditure Forms (OMB No. 0915–0318)—[Extension]

The Ryan White HIV/AIDS Program Allocation and Expenditure Reports will enable the Health Resources and Services Administration's HIV/AIDS Bureau to track spending requirements for each program as outlined in the legislation. Grantees funded under Parts A, B, C, and D of the Ryan White HIV/AIDS Program (codified under Title XXVI of the Public Health Service Act) would be required to report financial data to HRSA at the beginning and end of their grant cycle.

All parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds. Accurate allocation and expenditure records of the grantees receiving Ryan White HIV/AIDS Program funding are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

The forms would require grantees to report on how funds are allocated and spent on core and non-core services, and on various program components, such as administration, planning, evaluation, and quality management. The two forms are identical in the types of information that are collected. However, the first report would track the allocation of the award at the beginning of the grant cycle and the second report would track actual expenditures (including carryover dollars) at the end of the grant cycle.

The primary purposes of these forms are to (1) provide information on the number of grant dollars spent on various services and program components, and (2) oversee compliance with the intent of Congressional appropriations in a timely manner. In addition to meeting the goal of accountability to the Congress, clients, advocacy groups, and the general public, information collected on these reports is critical for HRSA, state and local grantees, and individual providers for the evaluation of the effectiveness of these programs.

The response burden for grantees is estimated as:

Program under which grantee is funded	Number of grantee respondents	Responses per grantee	Total responses	Hours to complete each form	Total hours
Part A	56	2	112	8	896
Part B	59	2	118	12	1416
Part A MAI	56	2	112	4	448
Part B MAI	59	2	118	4	472
Part C	361	2	722	7	5054
Part D	90	2	180	7	1260
Total	681		1,362		9,546

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this **Federal Register** Notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: December 22, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–32708 Filed 12–28–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 24, 2011.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, Natl. Inst. of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32746 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Application of "Omics" Technologies in Tissue Samples.

Date: January 18, 2011.

Time: 9:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health Sciences, Keystone Bldg., 530 Davis Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. High Throughput Screening for Reactive Oxygen Species.

Date: January 18, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov.*

Name of Commitee: National Institute of Environmental Health Sciences Special Emphasis Panel. In Vitro 3–D Tissue Models for Toxicity Testing.

Date: January 18, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Keystone Bldg., 530 Davis Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences,

P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32800 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognitive, Visual and Sensorimotor.

Date: January 19–20, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genetics and Epidemiology of Chronic Diseases.

Date: January 20, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32797 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee (IACC) Subcommittee on Safety.

The IACC Subcommittee on Safety will be having a conference call on Monday, January 12, 2011. The subcommittee plans to discuss a draft letter to the Secretary of Health and Human Services on issues related to autism and safety, as well as plans for future activities. This meeting will be accessible to the public through a conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Subcommittee on Safety.

Date: January 12, 2011.

Time: 11 a.m. to 1 p.m. Eastern Time.

Agenda: The subcommittee plans to discuss a draft letter to the Secretary of Health and Human Services on issues related to autism and safety, as well as plans for future activities.

Place: No in-person meeting; conference call only.

Conference Call Access: Dial: 888–456–0356, Access code: 142016.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8185a, Rockville, MD 20852, Phone: 301–443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The conference call will be accessible to the public through a conference call-in number and access code. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call, please e-mail *IACCTechSupport@acclaroresearch.com* or call the IACC Technical Support Help Line at 443–680–0098.

Individuals who participate by using this electronic service and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

Schedule subject to change.

Information about the IACC and a registration link for this meeting are available on the Web site: *http://www.iacc.hhs.gov.*

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32795 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to review and approve the final 2011 update of the IACC Strategic Plan for Autism Spectrum Disorder Research. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open Meeting.

Date: January 18, 2011.

Time: 10 a.m. to 5 p.m. *Eastern Time*—Approximate end time.

Agenda: The IACC will review and approve the final 2011 update of the IACC Strategic Plan for Autism Spectrum Disorder Research.

Place: The Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20852.

Conference Call: Dial: 888–577–8995. Access code: 1991506.

Cost: The meeting is free and open to the public.

Webcast Live: http://videocast.nih.gov/.

Registration: http://www.acclaroresearch.com/oarc/1–18–11. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

Deadlines: Notification of intent to present oral comments: January 10th by 5 p.m. ET.

Submission of written/electronic statement for oral comments: January 11th by 5 p.m. ET. Submission of written comments: January 14th by 5 p.m. ET.

Access: White Flint Metro (Red Line)—approximately ½ mile walk. On-site parking with parking validation available.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8185a, Rockville, MD 20852, Phone: (301) 443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note:

Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5 p.m. ET on Monday, January 10, 2011, with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral statement/comments including a brief description of the organization represented by 5 p.m. ET on Tuesday, January 11, 2011.

Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments, and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5 p.m. ET, Friday, January 14, 2011. The comments should include the name and, when applicable, the business or professional affiliation of the interested person. All written comments received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record. The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call or webcast, please e-mail *IACCTechSupport@acclaroresearch.com* or call the IACC Technical Support Help Line at 443–680–0098.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Schedule is subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32794 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The IACC Services Subcommittee will be holding a conference call on Friday, January 7, 2011. The subcommittee will discuss a set of draft recommendations to the Secretary of Health and Human Services on services and supports for people with Autism Spectrum Disorder. This conference call will be open to the public.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Services Subcommittee.

Date: January 7, 2011.

Time: 10 a.m. to 12 p.m. Eastern Time.

Agenda: The subcommittee will discuss a set of draft recommendations to the Secretary of Health and Human Services on services and supports for people with ASD.

Place: No in-person meeting; conference call only.

Conference Call Access: Dial: 888–456–0356. Access code: 1427016.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, 8185a, Rockville, MD 20852. Phone: 301–443–6040. E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: This conference call will be open to the public through a conference call in number and access code. Members of the public who participate using the conference call phone number will be able to listen to the discussion but will not be heard. If you experience any technical problems with the conference call, please e-mail *IACCTechSupport@acclaroresearch.com* or call the IACC Technical Support Help Line at 443–680–0098.

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

This notice is being published less than 15 days prior to the meeting due to the urgent need to discuss a set of recommendations to the Secretary of Health and Human Services on support and services so that these recommendations may be reviewed and approved by the full IACC committee at the meeting scheduled for January 18, 2011.

Meeting schedule subject to change.

Information about the IACC and a registration link for this meeting are available on the Web site: *http://www.iacc.hhs.gov.*

Dated: December 21, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32752 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board. Subcommittee on Clinical Investigations.

Open: February 7, 2011, 6:30 p.m. to 8 p.m.

Agenda: Discussion on investigation of human cancers.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Jeff Abrams, Executive Secretary, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Room 7018, Bethesda, MD 20892. (301) 496–6138.

Name of Committee: National Cancer Advisory Board.

Open: February 8, 2011, 9 a.m. to 3:30 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: February 8, 2011, 3:45 p.m. to 5 p.m.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: February 9, 2011, 9 a.m. to 12 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32750 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of EUREKA R01s.

Date: February 23, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, Natl. Inst. of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Room 664, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32748 Filed 12–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: 2011 Opioid Treatment Program (OTP) Supplement Survey—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Behavioral Health Statistics and Quality (CBHSQ) (formerly the Office of Applied Studies—OAS), in conjunction with the Center for Substance Abuse Treatment (CSAT), will conduct a facility-level census survey of opioid treatment programs (OTPs). Approximately 1,200 substance abuse treatment facilities identified by SAMHSA as being certified OTPs will make up the survey universe. In order to realize efficiencies in cost and data analysis, the survey will be conducted in conjunction with the 2011 National Survey of Substance Abuse Treatment Facilities (N–SSATS, OMB No. 0930–0106). However, a separate OMB approval will be requested for the OTP survey.

The OTP survey will use the same point prevalence date as the N–SSATS and will offer the same response options (paper questionnaire, online via the Internet, or by telephone with an interviewer). The information collected will include detailed information on OTP client characteristics and OTP facility operations, information that is not currently obtained by the N–SSATS or other federally-sponsored surveys.

The findings will supplement information collected by the annual N–SSATS and will be published by SAMHSA in a separate report on Opioid Treatment Programs. Survey data will also be used to update SAMHSA's "Medication-Assisted Treatment for Opioid Addiction State Profiles." These publications will be used by the Federal government, State and local governments, the U.S. Congress, researchers, and other health care professionals. The following Table

summarizes the estimated response burden for the survey.

ESTIMATED TOTAL RESPONSE BURDEN FOR THE 2011 OTP SURVEY

	Number of respondents	Responses per respondent	Average hours per response	Total hour burden
Certified OTP Facilities—2011 Survey	1,200	1	.83	996

Written comments and recommendations concerning the proposed information collection should be sent by January 28, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: January 22, 2010.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2010–32745 Filed 12–28–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0050]

National Protection and Programs Directorate; President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of an open Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Wednesday, January 19, 2011, via a conference call.

DATES: The NSTAC will meet Wednesday, January 19, 2011, from 2 p.m. to 3 p.m. For access to the conference bridge and meeting materials, please contact Sue Daage at (703) 235–4964 or by e-mail at *sue.daage@dhs.gov.*

ADDRESSES: The meeting will be held via a conference call.

FOR FURTHER INFORMATION CONTACT: James Madon, NSTAC Designated Federal Officer, Department of Homeland Security, telephone (703) 235–4900.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness telecommunications policy. The new NSTAC Chair, James Crowe, Chief Executive Officer (CEO), Level 3 Communications, will call the meeting to order and provide opening remarks. The new Vice Chair Maggie Wilderotter, Chairman and Chief Executive Officer, Frontier Communications, also will provide opening remarks. Government stakeholders will welcome the new NSTAC Chair and Vice Chair, present the new NSTAC By-laws, and discuss potential future taskings for the NSTAC in 2011. In addition, the NSTAC Principals plan to discuss the Cybersecurity Collaboration Task Force Report and receive an update on the work of the Communications Resiliency Task Force.

Meeting Agenda:

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Presentation on New By-laws and Discussion of Potential Future Taskings for the NSTAC in 2011
V. Discussion of the Cybersecurity Collaboration Task Force Report
VI. Communications Resiliency Task Force Update
VII. Closing Remarks
VIII. Adjournment

Procedural:

While this meeting is open to the public, participation in the NSTAC deliberations is limited to committee members and appropriate Federal Government officials. Discussions may include committee members, appropriate Federal Government officials, and other invited persons attending the meeting to provide information that may be of interest to the committee.

For access to the conference bridge and meeting materials, contact Sue Daage at (703) 235–4964 or by e-mail at *sue.daage@dhs.gov* by 5 p.m. January 13, 2011. Written comments may be sent to the Deputy Manager, National Communications System, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Washington, DC 20598–0615. Written comments must be received by the Deputy Manager no later than January 12, 2011, identified by **Federal Register** Docket Number DHS–2010–0050 and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *E-mail:* Include the docket number in the subject line of the e-mail message.
- *Fax:* (703) 235–4981.
- *Mail:* Deputy Manager, National Communications System, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Washington, DC 20598–0615.

Instructions: All written submissions received must include the words "Department of Homeland Security" and the docket number for this action. Written comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov.*

Information on Services for Individuals with Disabilities:

Persons with disabilities who require special assistance should indicate this when arranging access to the teleconference and are encouraged to identify anticipated special needs as early as possible.

Dated: December 16, 2010.

James Madon,

Designated Federal Officer for the NSTAC.

[FR Doc. 2010–32709 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–1137]

Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625–0058, 1625–0072 and 1625–0092

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day Notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0058, Application for Permit to Transport Municipal and Commercial Waste, 1625–0072, Waste Management Plans, Refuse Discharge Logs, Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping, and 1625–0092 Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 28, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2010–1137] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2100 2ND ST SW., STOP 7101, WASHINGTON DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2010–1137], and must be received by February 28, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. *Please see* the "Privacy Act" paragraph below.

Submitting Comments:

If you submit a comment, please include the docket number [USCG–2010–1137], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type "USCG–2010–1137" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1137" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12–140 on the ground floor of

the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

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

Information Collection Requests.

1. *Title:* Application for Permit to Transport Municipal and Commercial Waste.

OMB Control Number: 1625–0058.

Summary: This information collection provides the basis for issuing or denying a permit, required under 33 U.S.C. 2601 and 33 CFR 151.1009, for the transportation of municipal or commercial waste in the coastal waters of the United States.

Need: In accordance with 33 U.S.C. 2601, the U.S. Coast Guard issued regulations requiring an owner or operator of a vessel to apply for a permit to transport municipal or commercial waste in the United States and to display an identification number or other marking on their vessel.

Forms: None.

Respondents: Owners and operators of vessels.

Frequency: Every 18 months.

Burden Estimate: The estimated burden has decreased from 116 hours to 13 hours a year.

2. *Title:* Waste Management Plans, Refuse Discharge Logs, Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping.

OMB Control Number: 1625–0072.

Summary: This information is needed to ensure that: (1) Certain U.S. oceangoing vessels develop and maintain a waste management plan; (2) certain U.S. oceangoing vessels maintain refuse discharge records; (3) certain individuals that act as person-in-charge of the transfer of fuel receive a letter of instruction, for prevention of pollution; and (4) certain Great Lakes vessels comply with dry cargo residue requirements.

Need: This collection of information is needed as part of the Coast Guard's pollution prevention compliance program.

Forms: CG–33

Respondents: Owners, operators, masters, and persons-in-charge of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 67,030 hours to 65,464 hours a year.

3. *Title:* Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters.

OMB Control Number: 1625–0092.

Summary: To comply with the Consolidated Appropriations Act, 2001, Public Law 106–554, 114 Stat. 2763, 2763A–315, this information collection is needed to enforce sewage and graywater discharges requirements from certain cruise ships operating on Alaskan waters.

Need: Title 33 CFR part 159 subpart E prescribe regulations governing the discharge of sewage and graywater from cruise vessels, requires sampling and testing of sewage and graywater discharges, and establishes reporting and recordkeeping requirements.

Forms: Not applicable.

Respondents: Owners, operators and masters of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 637 hours to 2,121 hours a year.

Dated: December 23, 2010.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2010–32799 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–1005]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet in Washington, DC to discuss various issues relating to national maritime security. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, January 19, 2011 from 9 a.m. to 4 p.m. and Thursday, January 20, 2011 from 9 a.m. to 12 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before January 10, 2011. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before January 10, 2011.

ADDRESSES: The Committee will meet at the American Bureau of Shipping, 1400 Key Blvd, Suite 800, Arlington, VA 22209. Additionally, this meeting will be broadcast via a web enabled interactive online format and teleconference. Send written material and requests to make oral presentations to Mr. Ryan Owens, Assistant Designated Federal Officer (ADFO) of the National Maritime Security Advisory Committee, 2100 2nd Street SW., Stop 7581; Washington, DC 20593–7581. You may also e-mail material to *ryan.f.owens@uscg.mil.* This notice may be viewed in our online docket, USCG–2010–1005, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, ADFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Public Meeting

The agenda for the Committee meeting is as follows:

(1) Port Security Grants.

(2) Global Supply Chain Security Policy Efforts.

(3) Update to the Maritime Infrastructure Recovery Plan and the Maritime Transportation System Security Recommendations.

(4) Results of Maritime Transportation Security Act Tasking.

Procedural

This meeting is open to the public and will also be conducted via an online meeting format. Please note that the public portion of the meeting may close early if all business is finished. Seating is very limited, members of the public wishing to attend should register with Mr. Ryan Owens, ADFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil* no later than January 10, 2011. To participate via teleconference, dial 866–717–0091, the pass code to join is 3038389#. Additionally, if you would like to participate in this meeting via the online Web format, please log onto *https://connect.hsin.gov/uscgnmsac/* and follow the online instructions to register for this meeting. Members of the public may make oral presentations during the public portion of the meeting. If you would like to make an oral presentation at the public portion of the meeting, please notify the ADFO no later than Monday, January 10, 2011.

Written material for distribution at a meeting should reach the Coast Guard no later than Monday, January 10, 2011. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the ADFO no later than Monday, January 10, 2011.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the ADFO as soon as possible.

Dated: December 21, 2010.

R. F. Owens,

U.S. Coast Guard, Office of Port and Facility Activities, Alternate Designated Federal Official, NMSAC.

[FR Doc. 2010–32717 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1130]

Notice of Public Meeting on the International Maritime Organization Guidelines for Exhaust Gas Cleaning Systems for Marine Engines To Comply with Annex VI to MARPOL 73/78

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The United States Coast Guard will conduct a public meeting on the International Maritime Organization guidelines for exhaust gas cleaning systems for marine engines in Washington, DC. The purpose of this meeting will be to collect information for updates to CG–543 policy letter 09–01 that provide guidance for exhaust gas cleaning systems under MARPOL Annex VI regulation 4.

DATES: This public meeting will be held for two days beginning at 9:30 a.m., Eastern Time, on Wednesday, January 19 and ending at 4 p.m., Eastern Time, on Thursday, January 20, 2011. This meeting is open to the public.

ADDRESSES: The public meeting will be held in Room 2501 of the United States Coast Guard Headquarters Transpoint building in Washington DC. The Transpoint building is located at 2100 Second Street, Southwest, in Washington, DC, approximately 1 mile from the Southwest-SEU Metro Station.

FOR FURTHER INFORMATION CONTACT: For additional information about this public meeting you may contact Mr. Wayne Lundy by telephone at 202–372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss guidelines and accompanying washwater discharge criteria developed by the IMO for exhaust gas cleaning systems for marine engines to remove sulphur oxide emissions in order to comply with regulation 14 of Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

On July 21, 2008, the Maritime Pollution Prevention Act of 2008, Public Law 110–280, was enacted. This legislation amended the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901–1915. APPS, which defines the MARPOL Protocol to include Annex VI, makes it unlawful to act in violation MARPOL Annex VI. *See* 33 U.S.C. 1901 and 1907. Working with other agencies, under 33 U.S.C. 1903, the Coast Guard is charged with administering and enforcing the MARPOL Protocol.

Agenda of Meeting

The public meeting will cover:
(1) Potential type approval process;
(2) Development of explicit test procedures;
(3) Inspection & verification of compliance;
(4) Consistency of the sludge from washwater;
(5) Proper disposal of sludge;
(6) Adequate reception facilities;
(7) Safety concerns;
(8) Training needs; and
(9) Recordkeeping.

Procedural

This meeting is open to the public. Please note that the public meeting has a limited number of seats and may close early if all business is finished. There will be audiovisual arrangements available for those interested in making presentations. Also, teleconferencing will be available. Those interested in making presentations or teleconferencing should contact Mr. Wayne Lundy by telephone at (202) 372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil.*

The IMO guidelines are contained in document MEPC.184(59). A copy of the IMO guidelines is available in the docket. A limited number of paper copies will be available at this meeting. Summaries of comments made, materials presented, and lists of attendees will be available on the docket at the conclusion of the meeting. To view comments and materials in the docket, go to *http://www.regulations.gov* at any time, enter the docket number "USCG–2010–1130" in the Search box, and click on "Go>>."

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Wayne Lundy at (202) 372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil* as soon as possible.

Dated: December 23, 2010.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2010–32796 Filed 12–28–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–126]

Notice of Submission of Proposed Information Collection to OMB; Evaluation of the Rapid Re-Housing for Homeless Families Demonstration Program

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 FY 2008 budget for the U.S. Department of Housing and Urban Development (H.R. 2764) included a $25 million set-aside to implement a Rapid Re-housing for Families Demonstration (RRHD) Program "expressly for the purposes of providing housing and services to homeless families." Also included in the legislation was a requirement that there be an evaluation of the demonstration program "in order to evaluate the effectiveness of the rapid re-housing approach in addressing the needs of homeless families." The Notice of Funding Availability (NOFA) states that "the Rapid Re-housing Demonstration program will include an evaluation phase, which will focus on determining the efficacy of the assessment process and the housing/service intervention related to how successfully households are able to independently sustain housing after receiving short-term leasing assistance."

The Participation Agreement (for the collection of informed consent and

contact information), the 6-month Tracking Letter, and the Participant Follow-up Survey Instruments are all necessary to conduct the Congressionally-mandated evaluation of the Rapid Re-Housing for Families Demonstration Program.

DATES: *Comments Due Date:* January 28, 2011

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: Evaluation of the Rapid Re-housing for Homeless FamiliesDemonstration Program.

OMB Approval Number: 2528- New.

Form Numbers: None.

Members of Affected Public: Households.

Description of the Need for the Information and Its Proposed Use:

The FY 2008 budget for the U.S. Department of Housing and Urban Development (H.R. 2764) included a $25 million set-aside to implement a Rapid Re-housing for Families Demonstration (RRHD) Program "expressly for the purposes of providing housing and services to homeless families." Also included in the legislation was a requirement that there be an evaluation of the demonstration program "in order to evaluate the effectiveness of the rapid re-housing approach in addressing the needs of homeless families." The Notice of Funding Availability (NOFA) states that "the Rapid Re-housing Demonstration program will include an evaluation phase, which will focus on determining the efficacy of the assessment process and the housing/service intervention related to how successfully households are able to independently sustain housing after receiving short-term leasing assistance."

The Participation Agreement (for the collection of informed consent and contact information), the 6-month Tracking Letter, and the Participant Follow-up Survey Instruments are all necessary to conduct the Congressionally-mandated evaluation of the Rapid Re-Housing for Families Demonstration Program.

Frequency of Submission: On-occasion.

REPORTING BURDEN

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
Contact Information	All enrolled families (N=1,200)	1,200	5 (3–7)	1	100
Tracking Information	All enrolled families (N=1,200)	1,200	2 (1–3)	1	40
Follow-up Survey	All enrolled families (N=1,200)	1,200	25 (20–30)	1	500
Total Burden Hours					640

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 22, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–32790 Filed 12–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5377–N–05]

Notice of Proposed Information Collection: Comment Request; Floodplain Management and Protection of Wetlands

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* February 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Rudene Thomas, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7256, Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Charles Bien, Acting Director, Office of Environment and Energy, Department of Housing and Urban Development, Room

7250, 451 7th Street, Washington, DC 20410–7000. For telephone communication, contact Jerimiah Sanders, Environmental Review Division, 202–402–4571 or e-mail: *Jerimiah.J.Sanders@hud.gov.* This is not a toll-free number. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

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: Floodplain Management and Protection of Wetlands.

OMB Control Number: ####–####.

Description of the need for the information and proposed use: The purpose of this information collection is to document regulatory compliance with Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands." Each respondent that proposes to use HUD assistance to benefit a property located within a floodplain or wetland must establish and maintain sufficient records to enable the Secretary of HUD to determine whether the floodplain management requirements of 24 CFR part 55, especially subpart C, and the protection of wetlands requirements of Executive Order 11990 have been met. The record, together with other environmental compliances that a proposed project may require under the National Environmental Policy Act and related laws, will serve to obtain the approval of an application under 24 CFR part 50 or will allow the use of grant funds or assistance already awarded under 24 CFR part 58.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Primary: Local, State, or Tribal Governments. Others: Public housing agencies, and private non- and for-profit entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Annual reporting and recordkeeping hour burden estimate is a total of 2,700 hours. Estimates are 300 respondents, 1 frequency, and 9 hours of response. Total of 300 hours is estimated for notification of floodplain hazard (regulatory reference is Sec. 55.21). Total of 2,400 hours is estimated for documentation of compliance with Sec. 55.20 (regulatory reference is Sec. 55.27).

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 22, 2010.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–32788 Filed 12–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5386–N–12]

Office of Inspector General; Privacy Act of 1974; Notification of the Office of Inspector General Intent To Consolidate, Update, Delete, and Implement Privacy Act Systems of Records

AGENCY: Office of the Chief Information Office, HUD.

ACTION: Notification of Consolidation, Update, Deletion, and Implementation of Privacy Act Systems of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that HUD's Office of Inspector General (OIG) proposes to consolidate, update and delete Systems of Records (SORs) within its existing repository of SORs, and establish a new SORs to be maintained by the 13 Regional Special Agents in Charge nationwide and the Deputy Assistant Inspector General for Investigations in Washington, D.C. The OIG, pursuant to the Privacy Act of 1974, currently maintains six SORs: (1) Investigative Files of the Office of Inspector General (HUD/OIG–1); (2) Hotline Complaint Files of the Office of Inspector General (HUD/OIG–2); (3) Name Indices System of the Office of Inspector General (HUD/OIG–3); (4) Independent Auditor Monitoring Files of the Office of Inspector General (HUD/OIG–4); (5) Auto Audit of the Office of Inspector General (HUD/OIG–5); and (6) Auto Investigation of the Office of Inspector General (HUD/OIG–6). The notice for these SORs was last published on May 22, 2000 (65 FR 33242). The OIG also proposes to create a seventh system of records, OIG Giglio Information File (HUD/OIG–7). Accordingly, the notice, pursuant to 5 U.S.C. 552a(e)(4) and (11), of the establishment of a new system of records follows: HUD OIG is updating its *Giglio* Policy and is thereby creating a new system of records for which no public notice consistent with the provisions of 5 U.S.C. section 552(e)(4) and (11) has been published, OIG *Giglio* Information File, HUD/OIG–7. The file is being created to ensure that, upon the request of a Requesting Official within the Department of Justice, OIG Giglio Officials are able to provide the information necessary to allow the prosecuting attorneys to meet their constitutional obligations under the United States Supreme Court case of *Giglio* v. *United States,* 405 U.S. 150 (1972), and the case law following that decision. A new routine use was established for prior 6 SORs effective October 15, 2007, as noticed in the **Federal Register** on September 14, 2007 (72 FR 52572). The new routine use permits disclosure of records to respond to breach of personally identifiable information. This consolidation refers to that routine uses for all 7 OIG SORs. This consolidation and update amends routine use 3 for HUD/OIG–1, HUD/OIG–2, HUD/OIG–3, HUD/OIG–4, HUD/OIG–5, and HUD/OIG–6 to allow release of records to assist housing authorities who take personnel actions based on an OIG audit or investigation.

An eleventh routine use is added to HUD/OIG–1, HUD/OIG–2, HUD/OIG–3, HUD/OIG/5, and HUD/OIG–6 to allow release of information to licensing authorities regulating professional services, when the records reveal conduct related to activities associated with a HUD program that is appropriate for possible administrative or disciplinary sanctions, such as license revocation.

The OIG has also changed the name of HUD/OIG–6, Autoinvestigation of the Office of Inspector General to HUD/OIG–6 Autoinvestigation and the Case Management Information SubSystem (CMISS), while maintaining the same

routine uses and attributes of HUD/OIG–6. CMISS is an updated data system of the investigative case files, formerly maintained in Auto Investigation, which will continue to maintain its information and data. This consolidation also updates routine use 9 due to legislation (IG Reform Act of 2008) enacted in 2008 changing the name of the President's Council on Integrity and Efficiency (PCIE) to the Council of Inspectors General on Integrity and Efficiency (CIGIE) and corrects the disposition schedule.

The OIG also deletes two obsolete SORs from its inventory, the Investigation Files (HUD/DEPT 24) and Audit Planning and Operations systems (HUD/DEPT–77). This notice serves to update the OIG repository of SORs and reflects the current posture of each SOR. Additionally, this notice deletes and supersedes all prior notifications for the SORs referenced in this publication.

DATES: *Effective Date:* This proposal shall become effective *January 28, 2011,* unless comments are received on or before that date which would result in a contrary determination.

Comment Due Date: January 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Comments submitted by facsimile (FAX) will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8076. For OIG-related information: Richard Johnson, Deputy Counsel to the Inspector General, Office of Inspector General, Telephone Number (202) 708–1613. (These are not toll free numbers.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. section 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the proposed changes. In accordance with section 5 U.S.C. 552a(r) and the Office of Management and Budget Circular A–130, the Department has provided a report to OMB and the Congress of the proposed consolidation, update, deletion, and Implement of SORs. The report will be submitted to the Office of Management and Budget (OMB), and to the Chair of the Committee on Government Reform and Oversight, and the Chair of the Committee on Homeland Security and Governmental Affairs which requires a 40-day period in which to conclude its review of the submitted report.

Dated: December 20, 2010.

Kevin R. Cooke,

Deputy Chief Information Officer.

HUD/OIG–1

SYSTEM NAME:

Investigative Files of the Office of Inspector General.

SYSTEM LOCATION:

HUD OIG Headquarters, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) HUD program participants and HUD employees who are subjects of OIG inquiries or investigations; and (2) complainants and key witnesses where necessary for future retrieval.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of investigatory material compiled for law enforcement purposes, and include initial complaints filed against subjects or other information relating to potential violations of law, reports of investigation, findings of HUD officials, and recommendations and dispositions to be made.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. Appx. authorizes the Inspector General to conduct, supervise and coordinate investigations relating to the programs and operations of HUD.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking or defending actions to recover money or property, or take personnel actions based on an OIG investigation or audit, where such recovery or personnel action serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the CIGIE pursuant to Executive Order 12993, the records may be disclosed to the CIGIE and other Federal agencies, as necessary.

10. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department

may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. Records may be disclosed to private, State or Federal licensing authorities or boards regulating professional services, such as appraisers, attorneys, insurers, or mortgage brokers, when the records reveal conduct related to activities associated with a HUD program that is appropriate for possible administrative or disciplinary sanctions, such as license revocation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records are retrieved by manual or computer search of indices containing the name of the individual to whom the record pertains.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 3, Items 79–1 to 86, Appendix 3, HUD Handbook 2225.6, Rev. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room Number 5254, Washington, DC 20410.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 24 CFR parts 16 and 2003.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, law enforcement agencies, program participants, subject individuals, complainants, witnesses and other nongovernmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

HUD/OIG–2

SYSTEM NAME:

Hotline Complaint Files of the Office of Inspector General.

SYSTEM LOCATION:

HUD OIG Headquarters, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) HUD program participants and HUD employees who are subjects of hotline complaints alleging possible violations of law, rules or regulations, mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety; and (2) HUD employees and members of the general public who are complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of all forms and documentation generated by the complaint, including recommended and final disposition of the matter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App., authorizes the Inspector General to conduct, supervise and coordinate activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health or safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, State, or local agency charged with the

responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking or defending actions to recover money or property, or take personnel actions based on an OIG investigation or audit, where such recovery or personnel action serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other Federal agencies, as necessary.

10. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. Records may be disclosed to private, State or Federal licensing authorities or boards regulating professional services, such as appraisers, attorneys, insurers, or mortgage brokers, when the records reveal conduct related to activities associated with a HUD program that is appropriate for possible administrative or disciplinary sanctions, such as license revocation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records are retrieved by manual or computer search of indices containing the name, home address, home telephone number, and identification number assigned to the individual to whom the record pertains.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 3, Items 79–1 to 86, Appendix 3, HUD Handbook 2225.6, Rev. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room Number 5254, Washington, DC 20410.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 24 CFR part 16 and 2003.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, the General Accounting Office, other Federal agencies, program participants, subject individuals, complaints, witnesses and other nongovernmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would

reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

HUD/OIG–3

SYSTEM NAME:

Name Indices System of the Office of Inspector General.

SYSTEM LOCATION: HUD OIG, HEADQUARTERS, WASHINGTON, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of HUD program participants and HUD employees who have had some significant association with an OIG investigation, audit report, or hotline complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are contained in a computerized central reference system and can consist of one or more of the following items: Individual's name; alias or associated name; period covered by the audit; date of birth; report date; city and State where the individual is located; Social Security number or employer identification number; and the date the case was closed. This information is cross-referenced to an underlying OIG investigation, audit report, hotline complaint file number, or a departmental suspension/debarment or Mortgagee Review Board action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. Appx., authorizes the Inspector General to conduct, supervise and coordinate audits and investigations related to the programs and operations of HUD, to engage in other activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health or safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking or defending actions to recover money or property, or take personnel actions based on an OIG investigation or audit, where such recovery or personnel action serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other Federal agencies, as necessary.

10. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. Records may be disclosed to private, State or Federal licensing authorities or boards regulating professional services, such as appraisers, attorneys, insurers, or mortgage brokers, when the records reveal conduct related to activities associated with a HUD program that is appropriate for possible administrative or disciplinary sanctions, such as license revocation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records are retrieved through computer search or manual search by the name of the individual to whom the record pertains.

SAFEGUARDS:

Computer terminals are secured in controlled areas which are locked when unoccupied. Access to records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition

Schedule 3 (Administrative Records), Item No. 84, Appendix 3, HUD Handbook 2225.3 Rev. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room Number 5254, Washington, DC 20410.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR part 16 and 2003.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will give consideration to a request from an individual for amendment or correction of records pertaining to that individual. The procedures for requesting amendment or correction of records appear in 24 CFR part 16 and 2003.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, the General Accounting Office, other Federal agencies, program participants, subject individuals, complainants, witnesses and other nongovernmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

HUD/OIG–4

SYSTEM NAME:

Independent Auditor Monitoring Files of the Office of Inspector General.

SYSTEM LOCATION:

HUD OIG Headquarters, Cherry Hill, New Jersey.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are non-Federal independent auditors who have conducted audits of recipients of Federal funds received under HUD's programs. An independent auditor is: (a) A licensed certified public accountant or a person working for a licensed certified public accounting firm, or (b) a public accountant licensed on or before December 31, 1970, or a person working for a public accounting firm licensed on or before December 31, 1970.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of materials generated in connection with quality control reviews of the working papers of independent auditors, including standardized checklists for evaluating an independent auditor's work performance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App., requires the Inspector General to assure that any work performed by non-Federal auditors complies with the auditing standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, State or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking or defending actions to recover money or property, or take personnel actions based on an OIG investigation or audit, where such recovery or personnel action serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may

be disclosed to the PCIE and other Federal agencies, as necessary.

10. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Records are retrieved by manual or computer search of indices containing the name of the individual to whom the record pertains.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 3, Items 79–1 to 86, Appendix 3, HUD Handbook 2225.6, Rev. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room Number 5254, Washington, DC 20410.

NOTIFICATION PROCEDURE:

The System Manager will accept inquiries from an individual seeking notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR parts 16 and 2003.

RECORD SOURCE CATEGORIES:

The OIG collects information from the subject independent auditor, HUD, auditees, program participants, complainants and other nongovernment sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/OIG–5

SYSTEM NAME:

Auto Audit of the Office of Inspector General.

SYSTEM LOCATION:

HUD OIG Headquarters, Washington, DC, District Offices, and Field Offices (Boston, MA; New York City, NY; Philadelphia, PA; Atlanta, GA; Tampa, FL; New Orleans, LA; Kansas City, KS; Chicago, IL; Fort Worth, TX; Los Angeles, CA; Seattle, WA.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) HUD program participants and HUD employees who are associated with an activity that OIG is auditing or reviewing; (2) requesters of an OIG audit or other activity; and (3) persons and entities performing some other role of significance to the OIG's efforts, such as relatives or business associates of HUD program participants or employees, potential witnesses, or persons who represent legal entities that are connected to an OIG audit or other activity. The system also tracks information pertaining to OIG staff handling the audit or other activity, and may contain contact names for relevant staff in other agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of materials compiled and/or generated in connection with audits and other activities performed by OIG staff. These materials include information regarding the planning, conduct and resolution of audits and reviews of HUD programs and participants in those programs, internal legal assistance requests, information requests, responses to such requests, reports of findings, *etc.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (5 U.S.C. App. 3) authorizes the Inspector General to conduct, supervise and coordinate audits and investigations relating to the programs and operations of HUD, to engage in other activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial or specific danger to the public health or safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking or defending actions to recover money or property, or take personnel actions based on an OIG investigation or audit, where such recovery or personnel action serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental,

to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other Federal agencies, as necessary.

10. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. Records may be disclosed to private, State or Federal licensing authorities or boards regulating professional services, such as appraisers, attorneys, insurers, or mortgage brokers, when the records reveal conduct related to activities associated with a HUD program that is appropriate for possible administrative or disciplinary sanctions, such as license revocation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically in office automation equipment and manually in file jackets.

RETRIEVABILITY:

Records are retrieved by computer search of the Auto Audit software, and/or by reference to a particular file number.

SAFEGUARDS:

Records are maintained in a secure computer network, and in locked file cabinets or in metal file cabinets in rooms with controlled access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with (1) Records Disposition Schedule 3 (Administrative Records), Item Nos. 79–1 to 86, Appendix 3, HUD Handbook 2225.6 Rev 1; and (2) General Records Schedules, Appendix 22 (Inspector General Records), HUD Handbook 2228.2 Rev. 4.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Audit, Office of Management and Policy, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room Number 5254, Washington, DC 20410.

NOTIFICATION PROCEDURE:

The System Manager will accept inquiries from individuals seeking notification of whether the system contains records pertaining to them.

RECORD ACCESS PROCEDURES:

The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR parts 16 and 2003.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, other Federal agencies, the General Accounting Office (GAO), law enforcement agencies, program participants, subject individuals, complainants, witnesses and other non-governmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/OIG–6

SYSTEM NAME:

Auto Investigation and Case Management Information Subsystem (AI/CMISS).

SYSTEM LOCATION:

HUD OIG Headquarters, Washington, DC (Boston, MA; New York City, NY; Philadelphia, PA; Baltimore, MD; Atlanta, GA; Tampa, FL; New Orleans, LA; Kansas City, KS; Chicago, IL; Cleveland, OH; Fort Worth, TX; Los Angeles, CA; Seattle, WA.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of: (1) HUD program participants and HUD employees who are associated with an activity that OIG is investigating or evaluating; (2) requesters of an OIG investigative or other activity; and (3) persons and entities performing some other role of significance to the OIG's efforts, such as relatives or business associates of HUD program participants or employees, potential witnesses, or persons who represent legal entities that are connected to an OIG investigation or other activity. The system also tracks information pertaining to OIG staff handling the investigation or other activity, and may contain contact names for relevant staff in other agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of investigatory material compiled and/or generated for law enforcement purposes in connection with investigations and other activities performed by OIG staff. These materials include information regarding the planning, conduct and prosecution of investigations of HUD program participants and employees, legal assistance requests, information requests, responses to such requests, reports of investigations, *etc.* Data resources include the individual's name, Social Security Number, date of birth, home address, home telephone number, personal e-mail address, Employee Identification Number, Tax Identification, Driver License Number and name, passport information, State Identification, Narcotics and Dangerous Drugs Information System, Federal Bureau Investigation Number; Race/ethnicity, Gender, Employment History, Education, Income, and Financial information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 authorizes the Inspector General to

conduct, supervise and coordinate audits and investigations relating to the programs and operations of HUD, to engage in other activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial or specific danger to the public health or safety.

PURPOSES:

AI/CMISS provides HUD OIG Investigations with an automated system which manages cases under investigation from their inception to their closing through a centralized data repository of case information. AI/CMISS and its environment is a secure environment where access to information is controlled through a formal process of checks and authorizations involving a hierarchical supervisory structure. Special Agents in Charge (SAC), Assistant Special Agents in Charge (ASAC), Supervisory Forensic Auditors (SFA), Forensic Auditors (FA), Special Agents (SA) and support staff, document all steps in their assigned activities. Additionally, due to judicial involvement in some of the cases, the files kept and maintained by HUD OIG may be made available to the courts under discovery. AI/CMISS provides data that is currently available through the intranet to the investigators and auditors. This provides a method for remote HUD OIG users and traveling employees to access the AI/CMISS systems from their laptops regardless of whether or not they are located within a HUD OIG office. Both Systems support the HUD OIG requirement to maintain a detailed audit trail of cases to closure. This requires a system, which will be capable of capturing and maintaining data integrity during the complete case cycle while ensuring data privacy and confidentiality.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule, or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking or defending actions to recover money or property, or take personnel actions based on an OIG investigation or audit, where such recovery or personnel action serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided it an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other Federal agencies, as necessary.

10. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. Records may be disclosed to private, State or Federal licensing authorities or boards regulating professional services, such as appraisers, attorneys, insurers, or mortgage brokers, when the records reveal conduct related to activities associated with a HUD program that is appropriate for possible administrative or disciplinary sanctions, such as license revocation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically in office automation equipment and manually in file jackets.

RETRIEVABILITY:

Records are retrieved by computer search of the Auto Investigation or CMISS software by reference to individual's name, Social Security Number, Employee Identification Number, Tax Identification, Driver License Number and name, passport information, State Identification, Narcotics and Dangerous Drugs Information System, or Federal Bureau Investigation Number, and/or by reference to a particular file number.

SAFEGUARDS:

Records are maintained in a secure computer network, and in locked file cabinets or in metal file cabinets in rooms with controlled access.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with (1) Records Disposition Schedule 3 (Administrative Records), Item Nos. 79–1 to 86, Appendix 3, HUD

Handbook 2225.6 Rev. 1; and (2) General Records Schedules, Appendix 22 (Inspector General Records), HUD Handbook 2228.2 Rev. 4.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigation, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

Records are generally exempt from Privacy Act access. However, the System Manager will accept and give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

RECORD ACCESS PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will accept and give consideration to a request from an individual for access to records pertaining to that individual. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORD PROCEDURES:

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will accept and give consideration to a request from an individual for amendment or correction of records pertaining to that individual that are indexed and retrieved by reference to that individual's name and/or social security number. The procedures for requesting amendment or correction of records appear in 24 CFR parts 16 and 2003.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from HUD, other Federal agencies, GAO, law enforcement agencies, program participants, subject individuals, complainants, witnesses and other non-governmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled or generated for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled or generated for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

HUD/OIG–7

SYSTEM NAME:

OIG *Giglio* Information Files.

SYSTEM LOCATION:

The offices of Special Agents in Charge and Regional Inspectors General for Audit nationwide and the office of the Deputy Assistant Inspector General for Investigations and Deputy Assistant Inspector General for Audit, all identified as *Giglio* Officials in the OIG *Giglio* Policy (Boston, MA; New York City, NY; Philadelphia, PA; Baltimore, MD; Atlanta, GA; Tampa, FL; New Orleans, LA; Kansas City, KS; Chicago, IL; Cleveland, OH; Fort Worth, TX; Los Angeles, CA; Seattle, WA.).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may serve as affiants or testify as witnesses in criminal proceedings brought by the U.S. Department of Justice. All OIG employees are potential witnesses or affiants in Federal criminal prosecutions brought in connection with the work of OIG. Categories of Records in the System: This system contains potential witness impeachment information including records of disciplinary actions. Records will include, but are not limited to: (a) Specific instances of witness conduct that may be used for the purpose of attacking the witness' credibility or character for truthfulness; (b) evidence in the form of opinion as to a witness' character or reputation for truthfulness; (c) prior inconsistent statements; and (d) information that may be used to suggest that a witness is biased. The system may also contain any judicial rulings, related pleadings, correspondence, or memoranda pertaining to a relevant criminal case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (5 U.S.C. App. 3) authorizes the Inspector General to conduct, supervise and coordinate audits and investigations relating to the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial or specific danger to the public health or safety. These activities can require OIG employees to testify in Federal criminal prosecution.

PURPOSE OF THE SYSTEM:

This system has been established to enable OIG *Giglio* Officials (Special Agents in Charge and Regional Inspectors General for Audit nationwide and the office of the Deputy Assistant Inspector General for Investigations and Deputy Assistant Inspector General for Audit) to maintain and disclose records of potential impeachment information on OIG employees who are expected to testify in criminal cases as required by the case law following *Giglio*. It permits the OIG *Giglio* Officals to acquire, maintain, and disclose for law enforcement purposes, records relating to impeachment information on OIG employees. It permits the OIG offices identified above to obtain information from Federal and State agencies and personnel records and to maintain and disclose for law enforcement purposes records of impeachment information that is material to the defense of Federal criminal prosecutions. Primary users of this system will be OIG Giglio Officials, who are the regional Special Agents in Charge and Regional Inspectors General for Audit nationwide and the office of the Deputy Assistant Inspector General for Investigations and Deputy Assistant Inspector General for Audit. Secondary users will be Requesting Officials within the Department of Justice, who are senior officials serving as the points of contact concerning potential impeachment information within each of the United States Attorneys' offices, and Assistant United States Attorneys who are prosecuting cases and have an obligation to disclose impeachment material under the *Giglio* decision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(a) Upon request by a Requesting Official within the Department of Justice or a United States Attorney's office, to the Requesting Official, as defined in the United States Attorney's Manual, Title 9, paragraph 5.100, for the United States Attorney for each district (*see* Appendix USA–999 or EOUSA Internet addresses at *http://www.usdoj.gov/eousa*) to be used in accordance with that policy.

(b) A record will be provided to a court and/or defense attorney in satisfaction of the prosecuting attorneys' obligations under the *Giglio* decision and the case law following that decision.

(c) To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. HUD or HUD OIG or any component of either;

2. Any employee of OIG in his/her official capacity;

3. Any employee of OIG in his/her individual capacity where the Department of Justice has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and HUD OIG determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which OIG collected the records.

(d) In any case in which there is an indication of a violation or potential violation of law, criminal or regulatory in nature, the record in question may be disseminated to the appropriate Federal, State, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the law;

(e) In the course of investigating any potential or actual violation of any law, criminal, civil, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, State, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(f) A record relating to a case or matter may be disseminated in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(g) Subject to the limitations of 28 CFR 50.2, regarding the release of information during the pendency of criminal trials, and after a determination that release of the specific record in the context of a particular case would not constitute an unwarranted invasion of personal privacy, a record may be disseminated to the news media and public;

(h) Records not otherwise required to be released pursuant to 5 U.S.C. 552a may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests information on behalf of and at the request of the individual who is the subject of the record;

(i) A record may be disclosed as a routine use to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(j) Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Generally, all records are recorded on basic paper/cardboard material and stored in file folders in file cabinets. Some *Giglio* Officials may maintain the records in electronic format available through the *Giglio* Official's computer terminal.

RETRIEVABILITY:

Records are retrieved primarily by the name of the prospective witness. Identify the other means for retrieving records from the system. A record within this system of records may be accessed by the *Giglio* Official and provided to the Requesting Official.

SAFEGUARDS:

Records in the system are confidential and are located in file cabinets in the offices of the Special Agents in Charge or Deputy Assistant Inspector General for Investigations. Offices are locked during non-working hours and are secured by either the Federal Protective Service or in a private building with controlled access. The ability to access electronically is restricted to those who have a valid ID and password. Authorized access is limited to those with a need-to-know and for the appropriate functions.

RETENTION AND DISPOSAL:

Records are to be retained and disposed of in accordance with agency retention plans is in accordance with Records Disposition Schedule 3, Items 79–1 to 86, Appendix 3, HUD Handbook 2225.6, Rev. 1, and the OIG *Giglio* Policy, which states "Upon transfer or reassignment of the employee within OIG, the *Giglio* file will be forwarded to the *Giglio* Official at the employee's new duty station. Upon retirement, resignation, or transfer, the employee's *Giglio* file will be destroyed and anyone with a copy of the file will be informed to destroy their file on the employee."

SYSTEM MANAGER(S) AND ADDRESS:

System Manager for the system in each office is the OIG Giglio Official, defined in the OIG Giglio Policy as the Special Agent in Charge for each region and the Deputy Assistant Inspector General for Investigations. Point of Contact is the Assistant Inspector General for Investigation, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURES:

Records are generally exempt from Privacy Act access. However, the System Manager will accept and give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual. Address inquiries to the System Managers listed above.

RECORD ACCESS PROCEDURES:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this record system has been exempted from the access provisions in 5 U.S.C. 552a(d). However, the System Manager will accept and give consideration to a request from an individual for access to records pertaining to that individual that are indexed and retrieved by reference to that individual's name and/or social security number. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

CONTESTING RECORDS PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this record system has been exempted from the record contesting provisions in 5 U.S.C. 552a(d)(3)–(4). However, the System Manager will accept and give consideration to a request from an individual for amendment or correction of records pertaining to that individual that are indexed and retrieved by reference to that individual's name and/or social security number. The procedures for requesting amendment or correction of records appear in 24 CFR part 16 and 2003.

RECORDS SOURCE CATEGORIES:

Sources of records contained in this system include, but are not limited to, reports of Federal, State and local law enforcement agencies; official personnel files, reports by investigative agencies; data, memoranda and reports from the Court and agencies; and pleadings and other documents relevant to the court proceedings in particular cases. The OIG collects information from a wide variety of sources, including other Federal agencies, law enforcement agencies, program participants, subject individuals, complainants, witnesses and other non-governmental sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled or generated for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled or generated for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 2010–32769 Filed 12–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5386–N–15]

Notification of a New Privacy Act System of Records, Effort to Outcomes—Case Management System for the Disaster Housing Assistance Program (DHAP–IKE)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of a New Privacy Act System of Records.

SUMMARY: HUD proposes to create a new Privacy Act System of Records as required under the Privacy Act (5 U.S.C. 552a), as amended. The new records system is the Efforts to Outcomes (ETO) system, which contains the data on families transferred to HUD by the Federal Emergency Management Agency (FEMA) for participation in HUD's DHAP-Ike . Pursuant to FEMA these families are deemed eligible to receive rental housing assistance and on-going case management services, due to the catastrophic damage caused by Hurricanes Gustav or Ike . The purpose of the ETO application is to capture and monitor pertinent data relating to family self-sufficiency, permanent housing status, service needs, and to facilitate on-going tracking and management of these services, leading to greater self-sufficiency for participants when the DHAP-Ike ends.

DATES: *Effective Date:* The Effective date shall begin *January 28, 2011* or 40 days from the date the report of the new records system is submitted to OMB and Congress.

Comments Due Date: January 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8076. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records, the Efforts to Outcome System. Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records. The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: December 20, 2010.

Jerry E. Williams,

Chief Information Officer.

HUD/PIH–8

SYSTEM NAME:

Efforts to Outcome Case Management Tracking System for DHAP-Ike.

SYSTEM LOCATION:

Baltimore, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are covered by this system are individuals and families

displaced by Hurricanes Gustav or Ike, who receive rental subsidy through the DHAP-Ike and agree to all program requirements including case management.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain identifying information about program participants and their household members such as name, social security number, and current address. In addition, the files contain information about education level, employment and training needs, elderly and disability status, social service needs and service referrals. The client provides information regarding education level, employment and training, disability status and social service needs as information that the case manager may use to assess any barriers to permanent housing attainment and/or increased self-sufficiency. The case manager uses this information in order to identify appropriate service referrals, to help prepare clients for the eventual end of the DHAP-Ike in March 2011.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for DHAP is based on the Department of Homeland Security's general grant authority under section 102(b)(2) of the Homeland Security Act, 6 U.S.C. 112, and sections 408(b)(1), 426 and 306(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5174(b)(1), 5189(d) and 5149(a), and HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. McKinney Act of 1988, as amended, to include Disaster Housing Assistance Program Ike (DHAP-Ike) as a "program" of HUD, respectively.

PURPOSES:

ETO captures pertinent data relating to family self-sufficiency, permanent housing status and service needs. ETO supports DHAP-Ike grantees in their case management efforts and HUD staff in their program monitoring activities and providing required reports to FEMA in fulfillment of its responsibilities outlined within the Inter Agency Agreement (IAA). The system was procured through contract number: C–DEN–02332. The system allows DHAP-Ike grantees to implement and report case management services for FEMA's DHAP-Ike program, for which HUD is the servicing agent. This system will assist with the administration of rental housing assistance and case management services to individuals and families whose residences have been rendered uninhabitable as a result of Hurricanes Gustav and Ike. The data stored in this system of records may be used for research and statistical purposes. In such cases, data presented in any research report will be aggregated to a level that does not disclose information that can be used to identify any individual represented in the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To Case Managers—for caseload management and to track progress and outcomes of individuals enrolled in the DHAP-Ike;

(b) To PHAs to monitor outcomes and monitor case management activities provided at the local level;

(c) To FEMA—quarterly data reporting as required under the IAA to monitor program activities at the national level;

(d) To HUD or individuals under contract, grant or cooperative agreement with HUD, to monitor PHA efforts and compliance requirements, facilitate technical assistance and for research and evaluation of national program outcomes; and

(e) To HUD or individuals under contract, grant or cooperative agreement with HUD to monitor PHA activities and facilitate technical assistance to DHAP-Ike grantees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically on a computer server located at SunGard, 1500 Spring Garden St., 3rd Floor, Philadelphia, PA 19130.

RETRIEVABILITY:

Records are retrieved by PHA name, participant name, Social Security Number, FEMA Number, city, zip code, or general demographic characteristics. However, the general search method is by last name.

SAFEGUARDS:

Records are maintained on a secure computer network protected by a firewall. Access to the system is restricted to authorized users only, requires a user ID and is password protected. Manual files without unique identifier information will be safeguarded and accessed by staff on a need-to-know basis only. HUD and Social Solutions, Inc. (SSI, the Software Provider) will maintain manual files of ETO data without unique identifiers, information that does not allow an individual to be linked to the information in the file in the same manner as personally identifiable information, with proper administrative, and physical controls required to secure, protect, and preserve the integrity of all system generated data, as required under the Privacy Act of 1974. Additionally, hard copy files are stored by grantees (PHAs) in locations that are locked and secured, with access granted to only to a limited number of authorized users.

RETENTION AND DISPOSAL:

Information is archived electronically and stored. Records will be retained and disposed of in accordance with the General Records Schedule included in HUD Handbook 2228.2, appendix 14, items 21–26.

SYSTEM MANAGER(S) AND ADDRESS:

Iyabo Morrison, Public and Indian Housing, Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4232, Washington, DC 20410.

NOTIFICATION AND RECORDS ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned are in accordance with 24 CFR part 16—Implementation of the Privacy Act of 1974. Individuals seeking information, assistance, or inquiry about the existence of records should contact the Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410. Written requests must include the full name, current address, and telephone number of the individual making the request, as well as proof of identity, including a description of the requester's relationship to the information in question.

CONTESTING RECORDS PROCEDURES:

The procedures for contesting the contents of records and appealing initial denials appear in 24 CFR part 16—Implementation of the Privacy Act of 1974. If additional information or assistance is required, contact: (i) The Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 2256, Washington, DC 20410, if contesting the content of record; or (ii) The Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, for appeals of initial denials.

RECORD SOURCE CATEGORIES:

DHAP-Ike housing agency grantees, case managers, HUD contractors, sub-contractors, and HUD employees.

EXEMPTION(S):

None.

[FR Doc. 2010–32767 Filed 12–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2010–0063]

Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Massachusetts—Request for Interest (RFI)

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: RFI in Commercial Wind Energy Leasing Offshore Massachusetts, and Invitation for Comments from Interested and Affected Parties.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) invites submissions describing interest in obtaining one or more commercial leases for the construction of a wind energy project(s) on the Outer Continental Shelf (OCS) offshore Massachusetts. BOEMRE will use the responses to this RFI to gauge specific interest in commercial development of OCS wind resources in the area described, as required by 43 U.S.C. 1337(p)(3). Parties wishing to obtain a commercial lease for a wind energy project should submit detailed and specific information as described below in the section entitled, "Required Indication of Interest Information." Also, with this announcement, BOEMRE invites all interested and affected parties to comment and provide information—including information on environmental issues and data—that will be useful in the consideration of the RFI area for commercial wind energy leases.

This RFI is published pursuant to subsection 8(p) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)) and the implementing regulations at 30 CFR part 285.

The area of interest for commercial development is off the coast of Massachusetts beginning approximately 12 nautical miles (nm) south of Martha's Vineyard and Nantucket and extending approximately 31 nm seaward, south to the 60 meter depth contour, then east approximately 65 nm, then north approximately 31 nm. The area is approximately 2,224 square nm and contains 321 whole OCS lease blocks as well as 163 partial blocks. This area was delineated in consultation with the BOEMRE Massachusetts Renewable Energy Task Force. A detailed description of the RFI area is found later in this notice.

This RFI is being published as a first step under the Secretary of the Interior's *Smart from the Start* OCS renewable energy initiative, which was announced by Secretary Ken Salazar on November 23, 2010. Some of the area delineated for the Massachusetts RFI may be identified as a Wind Energy Area (WEA) as referenced and described in the Secretary's announcement. A WEA is an OCS location that appears to be most suitable for commercial wind energy development and is identified by BOEMRE for further study and consultation to foster responsible and efficient leasing and development. The Massachusetts RFI was delineated based on deliberation and consultation with the Massachusetts Renewable Energy Task Force and the subsequent selection of a WEA will be based on further scrutiny resulting from input received on this RFI. The comments and information responding to this RFI will enable BOEMRE to identify focused WEA's for both competitive and noncompetitive leasing processes and accompanying environmental review under the National Environmental Policy Act (NEPA).

DATES: BOEMRE must receive your submission indicating your interest in this potential commercial leasing area no later than February 28, 2011 for your submission to be considered. BOEMRE requests comments or other submissions of information by this same date. We will consider only the submissions we receive by that time.

Submission Procedures: You may submit your indications of interest, comments, and information by one of two methods:

1. *Electronically: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2010–0063, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this request for information. BOEMRE will post all comments.

2. *By mail, sending your indications of interest, comments, and information to the following address:* Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170.

FOR FURTHER INFORMATION CONTACT: Jessica Bradley, Renewable Energy Program Specialist, Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170, (703) 787–1300.

SUPPLEMENTARY INFORMATION:

Purpose of the Request for Interest

The OCS Lands Act requires BOEMRE to award leases competitively, unless BOEMRE makes a determination that there is no competitive interest (43 U.S.C. 1337(p)(3)). This RFI is a preliminary step in the leasing process and the responses to it will assist BOEMRE in determining if there is competitive interest in the area described herein on the OCS offshore Massachusetts. If, following this RFI, BOEMRE determines that there is no competitive interest in this area offshore Massachusetts, BOEMRE may proceed with the noncompetitive lease process pursuant to 30 CFR 285.232 of the Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf (REAU) rulemaking. If, following this RFI, BOEMRE determines that there is competitive interest in the RFI area, BOEMRE may proceed with the competitive leasing process set forth under 30 CFR 285.211 through 285.225. Whether the leasing process is competitive or noncompetitive, it will include opportunities for the public to provide input as well as a thorough environmental review, and will be conducted in conformance with all applicable laws and regulations.

As part of the renewable energy leasing process, BOEMRE has consulted with the Commonwealth of Massachusetts on offshore renewable energy development. The Commonwealth of Massachusetts has expressed that it welcomes expressions of interest that support any potential commercial scale wind energy development. The Commonwealth notes that it looks forward in particular to expressions of interest that propose the integrated development of significant generation capacity and a transmission system to connect the generation project(s) to the New England electric grid in Massachusetts or the New England region. Additionally, Massachusetts will ask respondents to provide a preliminary description of infrastructure and locations for on-shore assembly, supply chain and maintenance operations. See companion

piece from the Commonwealth of Massachusetts that provides additional information on the State's interest and goals at: *http://www.mass.gov/?pageID=eoeeaterminal&L=4&L0=Home&L1=Energy%2c+Utilities+%26+Clean+Technologies&L2=Renewable+Energy&L3=Wind&sid=Eoeea&b=terminalcontent&f=doer_renewables_wind_offshore-wind&csid=Eoeea.*

Parties other than those interested in obtaining a commercial lease are welcome to submit comments in response to this RFI. Further, BOEMRE has formed the BOEMRE/Massachusetts Renewable Energy Task Force for coordination among relevant Federal agencies and affected state, local, and tribal governments throughout the leasing process. Task Force meeting materials are available on the BOEMRE Web site at: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.htm#Massachusetts.*

Background

Energy Policy Act of 2005

EPAct amended the OCS Lands Act by adding subsection 8(p), which authorizes the Secretary of the Interior to grant leases, easements, or rights-of-way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas. EPAct also required the issuance of regulations to carry out the new authority pertaining to renewable energy on the OCS. The Secretary delegated this authority to issue leases, easements, and ROWs, and to promulgate regulations, to the Director of BOEMRE. BOEMRE published the REAU rule on April 29, 2009.

Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

In July 2010, the President signed an Executive Order establishing the National Ocean Council. The Order establishes a comprehensive, integrated national policy for the stewardship of the Nation's ocean, coasts and Great Lakes and outlines procedures for the implementation of coastal and marine spatial planning through regional planning bodies.

BOEMRE appreciates the importance of coordinating its planning endeavors with other OCS users and regulators and intends to use the efforts of the regional planning bodies as a resource to inform its regulatory and leasing processes. BOEMRE anticipates that continued coordination with the State Renewable Energy Task Forces will help inform the comprehensive coastal and marine spatial planning effort.

Actions Taken by the Commonwealth of Massachusetts

In January 2010, the Patrick Administration released a study entitled *Strategic Options for Investment in Transmission in Support of Offshore Wind Development in Massachusetts.* The report was produced by a team at Analysis Group, under the leadership of Dr. Susan F. Tierney. It analyzes the transmission challenges involved in creating substantial offshore wind generation, and presents a series of options for the Commonwealth to consider in developing sufficient transmission capacity; *http://www.analysisgroup.com/uploadedFiles/Publishing/Articles/Strategic_Options_Offshore_Wind_12–01–09.pdf.*

In January 2010, the Executive Office of Energy and Environmental Affairs (EEA) promulgated the Massachusetts Ocean Management Plan, which establishes new protections for significant marine resources and guides potential future marine development away from environmentally sensitive areas in State waters and on the OCS. To address renewable energy development, the Ocean Management Plan designates two locations, the Gosnold and Martha's Vineyard WEAs, for potential future commercial-scale wind energy development in state waters. Each community will have a significant role in approving projects within their respective jurisdictions. The Ocean Management Plan also distributes an initial development allotment of 100 turbines, on a sliding scale (based on coastline, ocean area, etc.) among the seven coastal regional planning authorities for the development of community (small-scale) wind energy development in state waters. The Ocean Management Plan is based on, and presents detailed maps of, a comprehensive analysis of currently available natural resource and human use data. Some data from the Ocean Management Plan extend sufficiently onto the OCS and will help inform ongoing planning in association with the Federal leasing process; additional data will be developed by the state in conjunction with BOEMRE. *See http://www.mass.gov/eea/mop* for material associated with the Ocean Management Plan. For Ocean Management Plan spatial data that extends onto the OCS, go to the on-line Massachusetts Ocean Resource Information System (MORIS). To interactively view the spatial data in MORIS, go to *http://www.mass.gov/czm/mapping/index.htm* and select "Yes" to accept the terms of use. Data are located in the "BOEMRE Request for Interest (RFI)" folder, located within the "Ocean Management" folder. Directions on how to navigate the map and download data are available on the MORIS Web site.

The Massachusetts Clean Energy Center has solicited a *Port and Support Infrastructure Analysis for Offshore Energy Development,* which will analyze shore and port facilities with a view towards identifying appropriate port facilities, estimating upgrades to make the locations suitable to support offshore energy development, and quantifying economic impacts on the port area.

On July 26, 2010, Massachusetts Governor Deval Patrick and Rhode Island Governor Donald Carcieri signed a Memorandum of Understanding (MOU) to jointly explore the potential development of offshore wind energy in an "area of mutual interest" (AMI) on the OCS offshore both States. BOEMRE will work with both states and the BOEMRE/Rhode Island and BOEMRE/Massachusetts Renewable Energy Task Forces in moving forward with renewable energy leasing within this area.

Determination of Competitive Interest

The first step in determining whether there is competitive interest in an area on the OCS for wind energy projects offshore of Massachusetts will be the evaluation of submissions describing nominations for particular areas of interest as suitable for commercial wind energy projects in response to this RFI. At the conclusion of the comment period for this RFI, BOEMRE will review the information received, undertake a completeness review and qualifications review of the nominations received, and make a determination of competitive interest. BOEMRE will first determine whether there is any geographic overlap of the areas of interest. If two areas of interest fully or partially overlap, the competitive process will begin as outlined in 30 CFR 285.211 through 285.225. BOEMRE will consult with the Massachusetts Renewable Energy Task Force throughout this process.

Situations may arise in which several parties nominate project areas that do not overlap. Under these circumstances, BOEMRE could choose to employ an allocation system of leases that involves the creation of competition across tracts. This system is referred to as intertract competition and would also be implemented under the competitive process outlined in 30 CFR 285.211 through 285.225. BOEMRE will consult with the BOEMRE/Massachusetts

Renewable Energy Task Force in determining intertract competition.

Competitive Process

If BOEMRE determines that competitive interest exists for this area, it would proceed with the following defined process, as described in 30 CFR 285.211 through 285.225, consulting with the BOEMRE/Massachusetts Renewable Energy Task Force, as appropriate:

(1) *Call for Information and Nominations (Call).* BOEMRE would publish in the **Federal Register** a notice of a Call for Information and Nominations for leasing in specified areas. The comment period following the notice of a Call would be 45 days. In the notice, BOEMRE may request comments seeking information on areas that should receive special consideration and analysis; on geological conditions (including bottom hazards); on archaeological sites on the seabed or nearshore; on possible multiple uses of the proposed leasing area (including navigation, recreation, and fisheries); and, on other socioeconomic, cultural, biological, and environmental matters.

BOEMRE would require potential lessees to submit the following information in response to the Call: the area of interest for a possible lease; a general description of the potential lessee's objectives and the facilities that the potential lessee would use to achieve those objectives; a general schedule of proposed activities, including those leading to commercial operations; data and information concerning renewable energy and environmental conditions in the area of interest, including the energy data, natural and cultural resource data, potential landside and nearshore project elements that may affect historic and cultural resources, and information that was used to evaluate the area of interest; and documentation showing that the submitting entity is qualified to hold a lease. However, an applicant would not be required to resubmit information already submitted in response to this RFI. The Call may solicit information relating to the offshore transmission system of interest to the state in addition to information relating to existing wind generating facilities and sites.

(2) *Area Identification.* BOEMRE would identify areas for environmental analysis and consideration for leasing in discussion with appropriate Federal agencies, states, local governments, Indian tribes and other interested parties based on the information submitted in response to this RFI and the Call.

(3) *Proposed Sale Notice.* BOEMRE would then publish the Proposed Sale Notice (PSN) in the **Federal Register** and send the PSN to any affected Tribal government, the State Historic Preservation Office, the Governor of any affected state and the executive of any local government that might be affected. The PSN would describe the areas offered for leasing and the proposed terms and conditions of a lease sale, including the proposed auction format, lease form and lease provisions. Additionally, the PSN would describe the criteria and process for evaluating bids. The PSN would be issued after completion of the final National Environmental Policy Act (NEPA) documentation, preparation of the Consistency Determination as required by the Coastal Zone Management Act (CZMA) and its implementing regulations, and preparation of various analyses of proposed lease sale economic terms and conditions. The comment period following issuance of a PSN would be 60 days.

(4) *Final Sale Notice.* BOEMRE would then publish the Final Sale Notice (FSN) in the **Federal Register** at least 30 days before the date of the sale. Should BOEMRE proceed with a competitive auction to award leases, BOEMRE would use one of the following three auction formats to select the winner as described at 30 CFR 285.220: sealed bidding; ascending bidding; or two-stage bidding (a combination of ascending bidding and sealed bidding). The BOEMRE would publish the criteria for winning bid determinations in the FSN.

(5) *Bid Evaluation.* Following publication of the FSN in the **Federal Register**, qualified bidders may submit their bids to BOEMRE in accordance with procedures specified for the auction format to be used. The bids, including the bid deposits if applicable, would be checked for technical and legal adequacy. BOEMRE would evaluate the bids to determine if the bidder has complied with all applicable regulations. BOEMRE reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

(6) *Issuance of a Lease.* Following the selection of a winning bid by BOEMRE, the submitter would be notified of the decision and provided a set of official lease forms for execution. The successful bidder would be required to execute the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10 days of receiving the lease copies. Upon receipt of the required payments, financial assurance, and properly executed lease forms, BOEMRE would issue a lease to the successful bidder.

Noncompetitive Process

If BOEMRE determines that there is no competitive interest in a proposed lease, it may proceed with the noncompetitive lease issuance process pursuant to 30 CFR 285.232, consulting with the BOEMRE/Massachusetts Renewable Energy Task Force, as appropriate. Within 60 days of the date of a determination of no competitive interest, the respondent would be required to submit a Site Assessment Plan (SAP), as described in 30 CFR 285.231(d)(2)(i).

Leases issued noncompetitively need to comply with the requirements of NEPA, CZMA, the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), and other applicable Federal statutes. In accordance with 30 CFR 285.231(e), BOEMRE would coordinate and consult, as appropriate, with affected Federal agencies, affected Indian tribes, and state and local governments, in issuing a noncompetitive lease and developing lease terms and conditions.

It is possible that responses to this RFI may result in determinations that there is competitive interest for some areas but not for others. BOEMRE will announce publicly its determinations before proceeding with a competitive process, a noncompetitive process, or both.

Environmental Review

The following describes BOEMRE's environmental review process, which would be coordinated, to the extent possible, with any Federal, tribal, and State agencies that may have jurisdiction over activities associated with OCS commercial wind energy leases. Other Federal, State, and tribal agencies may have additional and separate environmental review or permitting processes or other requirements.

After evaluating the responses to the RFI, but before publishing the PSN for a competitive lease sale or issuing a lease noncompetitively, BOEMRE would prepare a NEPA analysis for public review and conduct required consultations with Federal, tribal, and State agencies.

Several consultations would be conducted, as appropriate, and integrated into the NEPA process described below. These consultations include, but are not limited to, those required by the CZMA, ESA, Magnuson-Stevens Fishery Conservation and Management Act, NHPA, and Executive

Order 13175—"Consultation and Coordination with Tribal Governments." These consultations would be completed prior to the issuance of any leases.

BOEMRE will prepare an Environmental Assessment (EA) to evaluate the effects of issuing renewable energy leases. If the EA finds that the proposed action would be a major Federal action significantly affecting the quality of the human environment (42 U.S.C. 4332(c)), then the BOEMRE would begin the process of preparing an Environmental Impact Statement (EIS) to analyze the effects of issuing the lease(s) through either a noncompetitive or competitive process. This would include a public scoping period, including a 30-day comment period and one or more public meetings conducted to solicit input on the alternatives and issues to be addressed in a draft EIS. The draft EIS would describe the nature of the action under consideration, and any potential direct, indirect, and cumulative impacts that the action will have on biological or physical resources, as well as on socioeconomic conditions.

Description of the Area

The RFI area was delineated through consultation with the BOEMRE/Massachusetts Renewable Energy Task Force. The following whole OCS lease blocks are included within the RFI area:

In Providence NK19–07, blocks, 6976, 6977, 6978, 7022, 7023, 7024, 7025, 7026, 7027, 7028, 7029, 7072, 7073, 7074, 7075, 7076, 7077, 7078, 7079, 7118, 7119, 7120, 7121, 7122, 7123, 7124, 7125, 7126, 7127, 7128, and 7129.

In Providence NK19–07 following partial blocks are also included in the RFI area:

Block Number	Sub Block
6972	M,N,O,P
6973	M,N,O,P
6974	L,M,N,O,P
6975	D,F,G,H,I,J,K,L,M,N,O,P

In Chatham NK19–08, blocks 6761, 6811, 6861, 6862, 6911, 6912, 6913, 6961, 6962, 6963, 7011, 7012, 7013, 7014, 7061, 7062, 7063, 7064, 7065, 7111, 7112, 7113, 7114, and 7115.

In Block Island Shelf NK19–10, blocks 6019, 6020, 6021, 6022, 6023, 6024, 6025, 6026, 6027, 6028, 6029, 6030, 6069, 6070, 6071, 6072, 6073, 6074, 6075, 6076, 6077, 6078, 6079, 6080, 6081, 6082, 6083, 6084, 6125, 6126, 6127, 6128, 6129, 6130, 6131, 6132, 6133, 6134, 6175, 6176, 6177, 6178, 6179, 6180, 6181, 6182, 6183, 6184, 6225, 6226, 6227, 6228, 6229, 6230, 6231, 6232, 6233, 6234, 6275, 6276, 6277, 6278, 6279, 6280, 6281, 6282, 6283, 6284, 6325, 6326, 6327, 6328, 6329, 6330, 6331, 6332, 6333, 6334, 6376, 6377, 6378, 6379, 6380, 6381, 6382, 6383, 6384, 6428, 6429, 6430, 6431, 6432, 6433, 6434, 6480, 6481, 6482, 6483, 6484, 6532, 6533, and 6534.

In Block Island Shelf, NK19–10 the following partial blocks are also included in the RFI area:

Block Number	Sub Block
6119	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O
6120	A,B,C,D,E,F,G,H,I,J,K,L
6121	A,B,C,D,E,F,G,H,I,J,K,L
6122	A,B,C,D,E,F,G,H,I,J,K,L
6123	A,B,C,D,E,F,G,H,I,J,K,L
6124	A,B,C,D,E,F,G,H,I,J,K,L,N,O,P
6169	A,B,C,E,F,G,I,J,K,M,N,O
6174	B,C,D,F,G,H,J,K,L,N,O,P
6219	A,B,C,E,F,G,I,J,K,M,N,O
6224	B,C,D,F,G,H,J,K,L,N,O,P
6269	A,B,C,E,F,G,I,J,K,M,N,O

In Hydrographer Canyon NK19–11, blocks 6011, 6012, 6013, 6014, 6015, 6016, 6051, 6052, 6053, 6054, 6055, 6056, 6057, 6058, 6059, 6060, 6061, 6062, 6063, 6064, 6065, 6066, 6067, 6101, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6109, 6110, 6111, 6112, 6113, 6114, 6115, 6116, 6117, 6151, 6152, 6153, 6154, 6155, 6156, 6157, 6158, 6159, 6160, 6161, 6162, 6163, 6164, 6165, 6166, 6167, 6201, 6202, 6203, 6204, 6205, 6206, 6207, 6208, 6209, 6210, 6211, 6212, 6213, 6214, 6215, 6216, 6217, 6251, 6252, 6253, 6254, 6255, 6256, 6257, 6258, 6259, 6260, 6261, 6262, 6263, 6264, 6265, 6266, 6267, 6301, 6302, 6303, 6304, 6305, 6306, 6307, 6308, 6309, 6310, 6311, 6312, 6313, 6314, 6315, 6316, 6317, 6351, 6352, 6353, 6354, 6355, 6356, 6357, 6358, 6359, 6360, 6361, 6362, 6363, 6364, 6365, 6366, 6367, 6401, 6402, 6403, 6404, 6405, 6406, 6407, 6408, 6409, 6410, 6411, 6412, 6413, 6414, 6415, 6416, 6417, 6451, 6452, 6453, 6454, 6461, 6462, 6463, 6464, 6465, 6466, 6467, 6501, 6502, 6511, 6512, 6513, 6514, 6515, 6516, 6562, 6563, and 6564.

The area of interest is located off the coast of Massachusetts beginning approximately 12 nautical miles (nm) south of Martha's Vineyard and Nantucket and extending approximately 31 nm seaward, south to the 60 meter depth contour, then east approximately 65 nm, then north approximately 31 nm. The area is approximately 2,224 square nm and contains 321 whole OCS lease blocks as well as 163 partial blocks. The boundary of the RFI follows the points listed in the table below in clockwise order. Point numbers 1 and 57 are the same. Coordinates are provided in X, Y (eastings, northings) UTM Zone 18N, NAD 83 and geographic (longitude, latitude), NAD83.

Point No	X easting	Y northing	Longitude	Latitude
1	327200	4540800	−71.0546	41.000088
2	346400	4540800	−70.826429	41.003931
3	346400	4551600	−70.829121	41.101169
4	359600	4551600	−70.671998	41.103557
5	359600	4552800	−70.672272	41.114362
6	362000	4552800	−70.643698	41.114774
7	362000	4554000	−70.643967	41.125579
8	364400	4554000	−70.615387	41.125983
9	364400	4555200	−70.615653	41.136789

Point No	X easting	Y northing	Longitude	Latitude
10	380000	4555200	−70.42984	41.139245
11	380000	4550400	−70.428902	41.09602
12	384800	4550400	−70.371762	41.096715
13	384800	4531200	−70.36818	40.923806
14	452000	4531200	−69.570139	40.930514
15	452000	4574400	−69.573517	41.319642
16	456800	4574400	−69.516168	41.319914
17	456800	4564800	−69.515487	41.233442
18	461600	4564800	−69.458213	41.233685
19	461600	4560000	−69.457911	41.190448
20	466400	4560000	−69.400673	41.190661
21	466400	4550400	−69.400147	41.104187
22	471200	4550400	−69.342985	41.104371
23	471200	4545600	−69.34276	41.061133
24	476000	4545600	−69.285634	41.061289
25	476000	4536000	−69.285261	40.974811
26	480800	4536000	−69.228209	40.974938
27	480800	4531200	−69.22806	40.931698
28	485600	4531200	−69.171045	40.931797
29	485600	4488000	−69.170052	40.542625
30	480800	4488000	−69.226735	40.542528
31	480800	4483200	−69.226589	40.499285
32	471200	4483200	−69.339882	40.499007
33	471200	4478400	−69.339664	40.455764
34	456800	4478400	−69.509491	40.455141
35	456800	4483200	−69.509818	40.498382
36	452000	4483200	−69.566462	40.498119
37	452000	4492800	−69.567191	40.5846
38	423200	4492800	−69.907473	40.582428
39	423200	4488000	−69.906889	40.539191
40	413600	4488000	−70.020234	40.538246
41	413600	4483200	−70.019579	40.495009
42	389600	4483200	−70.302734	40.492164
43	389600	4488000	−70.303571	40.535396
44	380000	4488000	−70.416893	40.534062
45	380000	4492800	−70.417805	40.577291
46	370400	4492800	−70.531192	40.575844
47	370400	4497600	−70.532179	40.619071
48	360800	4497600	−70.645631	40.61751
49	360800	4502400	−70.646693	40.660734
50	356000	4502400	−70.703452	40.659911
51	356000	4512000	−70.705656	40.746356
52	352400	4512000	−70.748279	40.745718
53	352400	4522800	−70.750833	40.842965
54	330800	4522800	−71.006912	40.838793
55	330800	4507200	−71.002689	40.698345
56	327200	4507200	−71.045274	40.697598
57	327200	4540800	−71.0546	41.000088

Specific mitigation, stipulations, or exclusion areas may be developed as a result of site-specific environmental reviews and associated consultations, as well as continued coordination through the BOEMRE/Massachusetts Renewable Energy Task Force. Multiple use issues raised through consultation with the BOEMRE/Massachusetts Renewable Energy Task Force are described below.

BOEMRE established the Massachusetts Renewable Energy Task Force in November 2009, at the request of Governor Deval Patrick. The first meeting was held on November 19, 2009, to introduce the intergovernmental members, discuss the purpose of the task force, explain BOEMRE renewable energy leasing and environmental review process, and discuss a draft charter. The next meeting was held January 27, 2010, to present and discuss a draft RFI developed in consultation with the Commonwealth's Executive Office of Energy and Environmental Affairs. The Commonwealth initially proposed a development buffer of 9 nautical miles from the shore based on review of visual analysis materials. Based on input from the BOEMRE/Massachusetts Renewable Energy Task Force, the draft RFI was revised to begin 12 nautical miles offshore, which was presented at the September 8, 2010, Massachusetts Renewable Energy Task Force meeting. BOEMRE collected comments from task force members and held another meeting on October 15, 2010, to discuss additional requested changes. Several Massachusetts Renewable Energy Task Force members, including the State Historic Preservation Officer, the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Tribe, and representatives from the towns of Tisbury and Oak Bluffs, expressed a preference for the RFI area to begin 21 nautical miles offshore. BOEMRE has not changed the RFI boundary to begin 21 nautical miles offshore, but has depicted the 21 nautical mile delineation on the RFI map as a point of information for potential developers.

Nantucket Lightship Habitat Closure Area

Through consultation with the BOEMRE/Massachusetts Renewable Energy Task Force, the National Oceanic

and Atmospheric Administration's National Marine Fisheries Service (NMFS) has identified the Nantucket Lightship Habitat Closure Area within the RFI Area. NMFS has closed this area to all bottom-tending mobile fishing gear in order to minimize adverse effects of fishing on essential fish habitat (EFH). The NMFS has indicated that commercial wind development within this area may be subject to additional review in order to ensure that conservation efforts in this area are maintained. This area can be located at the following URL: *http://www.nero.noaa.gov/nero/regs/infodocs/MultsClosedAreas.pdf.* BOEMRE has also included this area on the RFI map as a point of information for potential developers.

Traffic Separation Scheme (TSS) and Navigational Issues

BOEMRE is aware that the RFI area lies adjacent, or in close proximity to a Traffic Separation Scheme (TSS) and thus the areas nominated in response to this RFI may need to be modified. The U.S. Coast Guard will require buffers from the edges of a TSS and from the entrance and exit to a TSS. Because proposed project characteristics will be unique to each individual project, the buffers will be further defined as more information is collected, such as vessel traffic types, density and routing direction. Further, it is important to note that two-way routes, fairways and TSSs are various forms of routing measures and that buffer dimensions will vary because of many factors, one of which is vessel traffic density/composition and rules-of-the-road protocol.

BOEMRE will take into consideration and review data including but not limited to Automatic Identification System (AIS) data that is used on ships and vessel traffic services. The BOEMRE also will also consult with relevant agencies such as the U.S. Coast Guard regarding potential issues concerning the TSS and other navigational and safety issues and will use best management practices. Depending on the findings, BOEMRE and the U.S. Coast Guard will develop reasonable and appropriate mitigations such as conditions on turbine placement, preservation of adequate navigation buffers and setbacks, protection of vessel traffic lanes or other operational restrictions utilizing their existing authorities, policies, and procedures.

If such mitigation cannot be achieved, portions of certain nominated areas may need to be excluded. The following blocks are highlighted for consideration of U.S. Coast Guard concerns: In Block Island Shelf NK19–10, blocks 6428, 6429, 6430, 6431, 6432, 6433, 6434, 6480, 6481, 6482, 6483, 6484, 6532, 6533, 6534; In Hydrographer Canyon NK19–11, blocks 6317, 6356, 6357, 6358, 6359, 6360, 6361, 6362, 6363, 6364, 6385, 6366, 6367, 6401, 6402, 6403, 6404, 6405, 6406, 6407, 6408, 6409, 6410, 6411, 6412, 6413, 6414b, 6415, 6416, 6417, 6451, 6452, 6453, 6454, 6461, 6462, 6463, 6464, 6465, 6466, 6467, 6501, 6502, 6511, 6512, 6513, 6514, 6515, 6516, 6562, 6563, 6564.

Department of Defense Activities on the Outer Continental Shelf

The Department of Defense conducts offshore testing, training, and operations on the Outer Continental Shelf. BOEMRE will consult with the Department of Defense on all proposed offshore wind energy projects to ensure that projects are compatible with Defense activities on the Outer Continental Shelf.

Map of RFI area

A map of the RFI area can be found at the following URL: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.htm#Massachusetts.*

A large scale map of the RFI area showing boundaries of the RFI area with numbered blocks is available from BOEMRE at the following address: Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170, *Phone:* (703) 787–1300, *Fax:* (703) 787–1708.

Required Indication of Interest Information

If you intend to submit an indication of interest in a commercial lease from BOEMRE for the development of wind resources in the area(s) identified in this RFI, you must provide the following:

(1) The BOEMRE Protraction Diagram name, number, and specific whole or partial OCS blocks or areas within the RFI area that are of interest for commercial development, including any required buffer area. If your proposed project area includes one or more partial blocks please describe those partial blocks in terms of a sixteenth of an OCS block. Note that any indications of interest identifying areas greater than what would be reasonably necessary to develop a commercial wind facility will not be considered as valid indications of interest. In addition, BOEMRE will not consider any areas outside of the RFI area in this process;

(2) A description of your objectives and the facilities that you may use to achieve those objectives;

(3) A schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the RFI area, including energy and resource data and information used to evaluate the RFI area; and

(5) Documentation demonstrating that you are legally, technically and financially qualified to hold a lease as set forth in 30 CFR 285.106 and 285.107. Your technical and financial documentation should demonstrate that you are capable of constructing, operating, maintaining, and decommissioning the facilities described in (2) above. Documentation of financial qualification should include information establishing access to sufficient capital to carry out development. Examples of documentation of technical qualification may include evidence of international or domestic experience with renewable energy projects or other types of electric-energy-related projects.

In addition, the Commonwealth has requested a description of plans for transmission to connect the wind energy project(s) to the on-shore grid. Please refer to the companion piece from the Commonwealth of Massachusetts that provides additional information on the State's interest and goals at: *http://www.mass.gov/?pageID=eoeeaterminal&L=4&L0=Home&L1=Energy%2c+Utilities+%26+Clean+Technologies&L2=Renewable+Energy&L3=Wind&sid=Eoeea&b=terminalcontent&f=doer_renewables_wind_offshore-wind&csid=Eoeea.* If you include a description of plans for transmission, please follow the instructions in the companion piece, and include (a) a description of the physical configuration of the transmission system including specific points of interconnection to the grid and (b) the ownership structure of the transmission system. For example, with respect to physical configuration, do you anticipate one or more radial line(s) or a network system (i.e., connected to the grid in more than one location); and would the radial line(s) or network be sized to support only the proposed wind energy project(s) or to accommodate future projects as well? With respect to ownership structure, would the transmission system be owned by the developers of the wind energy project(s) or otherwise on a merchant basis, by a traditional transmission company, or

through some other arrangement? Additionally, on what funding assumptions are plans for the wind energy project(s), including the transmission system, predicated? With regard to transmission, we recommend that the potential lessee(s) review the report entitled "Strategic Options for Investment in Transmission in Support of Offshore Wind Development in Massachusetts," dated January 8, 2010; *http://www.analysisgroup.com/uploadedFiles/Publishing/Articles/Strategic_Options_Offshore_Wind_12-01-09.pdf.*

It is critical that you submit a complete indication of interest so that BOEMRE may proceed with the commercial wind leasing process offshore Massachusetts in a timely manner. If BOEMRE reviews your indication of interest and determines that it is incomplete, BOEMRE will inform you of this determination in writing. This letter will describe the information that BOEMRE determined to be missing from your indication of interest, and that you must submit in order for BOEMRE to deem your submission complete. You will be given 15 business days from the date of the letter to submit the information that BOEMRE found to be missing from your original submission. If you do not meet this deadline, or if BOEMRE determines this second submittal to be insufficient as well, then BOEMRE retains the right to deem your indication of interest invalid. In that case, BOEMRE would not move forward with your indication of interest submitted in response to this RFI.

Protection of Privileged or Confidential Information

BOEMRE will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEMRE treat it as confidential. BOEMRE will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

However, BOEMRE will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEMRE will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating.

Section 304 of NHPA (16 U.S.C. 470 et seq; 1966, as amended)

BOEMRE is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if determination is made that the disclosure may, among other concerns, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that qualifies for protection under this section as confidential.

Dated: December 17, 2010.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2010–32853 Filed 12–28–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–FHC–2010–N045; 53330–1335–0000–J3]

Lake Champlain Sea Lamprey Control Alternatives Workgroup

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a meeting of the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup). The Workgroup's purpose is to provide, in an advisory capacity, recommendations and advice on research and implementation of sea lamprey control techniques alternative to lampricide that are technically feasible, cost effective, and environmentally safe. The primary objective of the meeting will be to discuss potential research initiatives that may enhance alternative sea lamprey control techniques. The meeting is open to the public.

DATES: The Workgroup will meet on Tuesday, January 18, 2011, 9 a.m. to 12 p.m., with an alternate date of Tuesday, January 25, 2011, from 9 a.m. to 12 p.m., should the meeting need to be cancelled due to inclement weather. Any member of public who wants to find out whether the meeting has been postponed may contact Ms. Stefi Flanders of the U.S. Fish and Wildlife Service, 802–872–0629, extension 10 (telephone); *Stefi_Flanders@fws.gov* (electronic mail) during regular business hours on the primary meeting date.

ADDRESSES: The meeting will be held at the Lake Champlain Basin Program/Vermont Fish and Wildlife Department facility at the Gordon Center House, 54 West Shore Road, Grand Isle, VT 05458; 802–372–3213 (telephone).

FOR FURTHER INFORMATION CONTACT: Dave Tilton, Designated Federal Officer, Lake Champlain Sea Lamprey Control Alternatives Workgroup, Lake Champlain Fish and Wildlife Resources Office, U.S. Fish and Wildlife Service, 11 Lincoln Street, Essex Junction, VT 05452 (U.S. mail); 802- 872–0629 (telephone); *Dave_Tilton@fws.gov* (electronic mail).

SUPPLEMENTARY INFORMATION: We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). The Workgroup's specific responsibilities are to provide advice regarding the implementation of sea lamprey control methods alternative to lampricides, to recommend priorities for research to be conducted by cooperating organizations and demonstration projects to be developed and funded by State and Federal agencies, and to assist Federal and State agencies with the coordination of alternative sea lamprey control research to advance the state of the science in Lake Champlain and the Great Lakes.

Dated: December 16, 2010.

James G. Geiger,

Assistant Regional Director—Fisheries, U.S. Fish and Wildlife Service, Hadley, Massachusetts 01035.

[FR Doc. 2010–32754 Filed 12–28–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice To Amend an Existing System of Records; Privacy Act of 1974; as Amended

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of amendment to an Existing System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing public notice of its intent to amend the Bureau of Land Management's (BLM) Range Management System—Interior, LLM–2 notice. The amendment includes changes to "System location," "Disclosures outside the Department of the Interior," "Storage," "Retrievability,"

"Safeguards," "Retention and Disposal," "System Manager(s) and Address," "Notification Procedures," "Record Access Procedures," and "Contesting Record Procedures." The category "Security Classification" has been added. The amended system of records is captioned "Interior-LLM–2" and is titled "Range Management System."

DATES: Comments must be received by February 7, 2011.

ADDRESSES: Any person interested in commenting on this amendment may do so by submitting comments in writing to the BLM Privacy Office, 1849 C Street, NW., 725 LS, Washington, DC 20240; hand delivering comments to the BLM Privacy Office, 1620 L Street, Suite 700, Washington, DC 20036; or e-mailing comments to *privacy@blm.gov.* Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Robert Roudabush, Division Chief, Rangeland Resources, Bureau of Land Management, 1849 C Street, NW., Room 201 LS, Washington, DC 20240, phone number 202–912–7222, or e-mail *Rob_Roudabush@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM maintains the Range Management system of records. The purpose of this system is to (1) maintain an orderly record of grazing permittee information, allotment information, historical allotment or grazing permittee information used to manage authorized grazing and grazing related activity on public land; (2) maintain support documentation to manage authorizations; (3) maintain billing and collections information; (4) maintain grazing decisions; (5) maintain correspondence related to grazing authorizations and allotments; (6) document unauthorized use; (7) enable the BLM to effectively administer livestock grazing and associated activities on public lands; and (8) provide information to state, local and tribal governments, and other Federal agencies, businesses, organizations, and individuals to assist in transparency and promote the orderly administration of livestock grazing on public lands.

For the purposes of this document a grazing permitee is an individual or business authorized to graze livestock on public land, an applicant for an authorization to graze livestock on public land, or a base property owner.

These amendments are in accordance with the recent decision in *Western Watersheds Project* v. *Bureau of Land Management,* Case No. CV 09–482–CWD, Memorandum Decision and Order (D. Idaho Sept. 13, 2010). In this case, the Court found that any privacy interest grazing permittees have in their names and addresses are minimal and the public interest in disclosing the names and addresses of permittees is substantial. Therefore, the Court held that the disclosure of the names and addresses of permittees would not constitute a clearly unwarranted invasion of personal privacy, and that the Department's reliance on Exemption 6, under the Freedom of Information Act for withholding this information, was not justified.

The amendments to the Range Management system of records will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. The DOI will publish a revised notice if changes are made based upon a review of the comments received.

Annette Cathcart,

Acting BLM Privacy Act Officer.

INTERIOR/LLM–2

SYSTEM NAME:

Range Management System—Interior, LLM–2.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Grazing case files in paper medium are maintained and can be accessed at the local field office where the grazing authorization is issued and managed. A grazing authorization consists of a permit, lease, or exchange of use agreement. Paper records can be viewed at the local field office, but are not consolidated by the Bureau of Land Management (BLM) and must be viewed at individual field offices. The Range Management system database called the Rangeland Administration System (RAS) is maintained and can be accessed at the U.S. Department of the Interior, Bureau of Land Management, National Operation Center, Denver Federal Center, Building 50, Denver, Colorado 80225. The records in RAS can also be accessed from the BLM Headquarters Office in Washington, DC and from all BLM state and field offices, and in all of the BLM public rooms.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals and businesses that are authorized to graze livestock on lands administered by the BLM, applicants for grazing authorizations, base property owners, and lien holders that have notified BLM. Only records reflecting personal information of individuals (*i.e.* citizens of the United States or aliens lawfully admitted for permanent residence) are subject to the Privacy Act. This system contains records which are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The paper records may contain the grazing permittee's name, address, telephone number; BLM assigned case file number and operator number; grazing allotment description; grazing applications; grazing preference summary and history; signed grazing authorization with all terms and conditions (including permits, leases and exchange of use agreements); grazing fee and service charge billing statements; evidence of ownership or control of base property; notice from lien holder with lien holder's name and address; corporate or partnership documentation; affiliate documentation; notice of authorized representative with authorized representative's name, address and phone number; livestock control agreements; copies of brand registration; closed unauthorized use case records; Cooperative Range Improvement Agreements; Range Improvement Permits; Assignment of Range Improvements; grazing decisions; correspondence to, or received from, the grazing permittee; and status of National Environmental Policy Act (NEPA) documentation. Information is provided by an applicant, grazing permittee, lien holder, and persons or businesses such as realtors or consultants, representing the grazing permittee. Information is provided either at or to a BLM facility. Some information, such as information related to permit compliance, is collected by BLM personnel. Paper records may contain information (*e.g.,* correspondence, signed authorization) that is not stored in the electronic record.

The electronic record may contain the grazing permittee's name, address, telephone number; BLM assigned case file number and operator number; grazing allotment description and information; current grazing application; grazing preference summary; terms and conditions of the

current grazing authorization; grazing fee and service charge billing statements; reports regarding compliance with terms and conditions of permits; notice of lien holder; and notice of authorized representative. Information is provided by the grazing permittee, lien holder, and persons or businesses representing the grazing permittee, such as realtors or consultants. Information is provided either at or to a BLM facility. Some information, such as information related to permit compliance, is collected by BLM personnel. Information is entered into the RAS by an authorized BLM employee or contractor. Information that is available on the RAS public Web site is available in the paper records and may be available at the local office on request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 315, *et seq.*

ROUTINE USE OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are:

(1) To provide the BLM, the DOI or state, local and tribal governments, and Federal agencies with relevant information about grazing authorizations, including decisions to authorize grazing on public lands, to allow BLM to administer livestock grazing on public rangelands, and to allow other government agencies to manage activities related to BLM's grazing program in accordance with applicable laws and regulations,

(2) To ensure that grazing permittees and interested members of the public have appropriate opportunity to be informed about the public land grazing program administered by the BLM,

(3) To print statements of grazing preference, grazing authorizations, billings for grazing fees, and to generate reports, and

(4) To provide grazing information, including allotment and pasture boundaries, to the public through an external Web site.

The publicly accessible Web site makes a number of reports available to the public. The reports are generated from the information in RAS. The BLM will provide personal and corporate names and addresses of grazing permittees on the publicly accessible Web site. Telephone numbers of individuals with a grazing authorization will not be made available on the publicly accessible Web site. Any personal financial information also will not be made available on the publicly accessible Web site. After the system amendment is published in the **Federal Register**, BLM will notify permittees of a 60 day opportunity to provide an alternate mailing address before providing access to names and addresses of individuals through the RAS public Web site.

DISCLOSURES OUTSIDE THE DOI MAY BE MADE WITHOUT THE CONSENT OF THE GRAZING PERMITTEE TO WHOM THE RECORD PERTAINS UNDER THE ROUTINE USES LISTED BELOW:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the congressional office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, or tribal) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To Federal, state, territorial, local, or tribal agencies that have requested information relevant or necessary to the hiring, firing, or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To state and local governments and tribal organizations or their representatives to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The DOI has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the DOI or another agency or entity) that rely upon the compromised information;

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the DOI's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of the Treasury to recover debts owed to the United States.

(12) To the news media when the disclosure is compatible with the purpose for which the records were compiled as determined by the BLM.

(13) To a consumer reporting agency if the disclosure requirements of the

Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To recipients of proposed grazing decisions as set forth in Title 43 Code of Federal Regulations (CFR) Part 4160.1(a) and Final Grazing decisions in accordance with Title 43 CFR Parts 4160.3(b) and 4.21(b)(3).

(15) To commercial interests (such as hunting guides, outfitters, energy and minerals developers, and right-of-way applicants) or their representatives, whose activities are likely to affect the grazing permittee's management of livestock or maintenance or use of range improvements and who require the information in order to communicate, consult with or coordinate activities with the grazing permittee.

(16) To state and local governments and tribal organizations, or their representatives, when needed to administer their duties that directly relate to livestock grazing on BLM administered public lands.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders in locked file cabinets and/or secure locking file rooms at BLM field offices. Electronic records are stored on disk, system hard drives, tape, or other appropriate media, and can be used to print paper or generate electronic reports.

RETRIEVABILITY:

Records are indexed and associated by grazing permittee and grazing authorization number, operator, allotment number, range improvement number, or location.

SAFEGUARDS:

Access to records that are not released under a routine use is limited to authorized personnel whose official duties require such access. The paper records are maintained in secure cabinets and/or in secure file rooms. The records are maintained with safeguards meeting the requirements of 43 CFR 2.51. Electronic records conform to the OMB and DOI guidelines reflecting the implementation of the Federal Information Security Management Act. Electronic data is protected through user identification, passwords, database permissions and software controls. Such security measures will establish different access levels for different types of users. A Privacy Impact Assessment was completed on the system to ensure that privacy protection measures were in place. BLM conducts information and records security training for all employees.

RETENTION AND DISPOSAL:

Paper records are covered by various BLM Record Schedules and the (NARA) guidance on permanent and temporary records disposition as follows:

Grazing Authorization Files, Grazing Operator Case Files, Schedule 4, Item 14a(1);

Grazing Authorization Files, Grazing Appeal Case Files, Schedule 4, Item 14a(2);

Accountable Officers Files (Grazing Bills), Schedule 6, Item 1; and

Trespass Investigative Files, Schedule 18, Item 31.

Electronic records are covered by the BLM Record Schedule 20, Item 42 and the NARA guidance on permanent and temporary records disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for the electronic record: System Owner Representative for Rangeland Management Systems, Bureau of Land Management (WO–220), Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

The official responsible for the paper records is the Field Manager at the designated field office where a grazing permittee's or lessee's records are located. If you are unaware of the particular field office where the records are located, the State Office with administrative responsibility over your state can be contacted:

Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427;

Bureau of Land Management, California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886;

Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076;

Bureau of Land Management, Idaho State Office,1387 S. Vinnell Way, Boise, Idaho 83709–1657;

Bureau of Land Management, Montana State Office, (*Area of Administration:* Montana, North Dakota, South Dakota), 5001 Southgate Drive, Billings, Montana 59101–4669;

Bureau of Land Management, Nevada State Office, 1340 Financial Boulevard, P.O. Box 12000, Reno, Nevada 89520–0006;

Bureau of Land Management, New Mexico State Office, (*Area of Administration:* New Mexico, Kansas, Oklahoma, Texas), 301 Dinosaur Trail, P.O. Box 27115, Santa Fe, New Mexico 87502–0115;

Bureau of Land Management, Oregon State Office, (*Area of Administration:* Oregon, Washington), 333 SW 1st Avenue, Portland, Oregon 97204;

Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84145–0155;

Bureau of Land Management, Wyoming State Office, (*Area of Administration:* Wyoming, Nebraska), 5353 Yellowstone Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send or provide a signed, written inquiry to the System Manager or the Privacy Officer at the respective BLM State Office as identified above or at the local BLM field office. The request envelope and letter should both be clearly marked "PRIVACY ACT INQUIRY." A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the Systems Manager or the Privacy Officer at the respective BLM State Office as identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR ACCESS." A request for access must meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections to or the removal of material from his or her records should send a signed, written request to the System Manager or the Privacy Officer at the respective BLM State Office as identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information is provided by the grazing permittee, applicant, lien holder, business, or individual representing the grazing permittee. Some information, such as permit compliance, is collected by BLM personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–32878 Filed 12–28–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000 L58530000.ES0000 241A; N–75701; 10–08807; MO# 4500014072; TAS:14X5232]

Notice of Realty Action: Recreation and Public Purposes Act Classification, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 303.66 acres of public land in Clark County, Nevada. Clark County proposes to use the land for a regional park.

DATES: Interested parties may submit written comments regarding the proposed classification for lease and/or conveyance of the land until February 14, 2011.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Dorothy Dickey, (702) 515–5119, e-mail: *Dorothy_Dickey@blm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f) and Executive Order No. 6910, the following described public land in Clark County, Nevada, has been examined and found suitable for classification for lease and/or conveyance under the provisions of the R&PP Act:

Mount Diablo Meridian

T. 20 S., R. 59 E.,
Sec. 1, lot 1, E½SW¼NE¼, SW¼SW¼NE¼, SE¼NE¼, E½SE¼.
T. 20 S., R. 60 E.,
Sec. 6, lots 5, 6, and 7.

The area described contains 303.66 acres, more or less, in Clark County.

This description will be refined upon final approval of the official plat of survey.

The parcel is located in the northwest part of the Las Vegas Valley and contains the geologic feature known locally as Lone Mountain. The park is generally south of the intersection between Lone Mountain Road and the Bruce Woodbury Beltway.

In accordance with the R&PP Act, Clark County has filed an application in which it proposes to develop the above-described land as a regional park with a recreation center, swimming pool, library, ball fields, tennis courts, basketball courts, playground, children's play area, restrooms, picnic areas, trailhead facilities, walking and jogging trails, parking lot, turf establishment, landscaping, lighting, utilities and ancillary equipment. Additional detailed information pertaining to this application, plan of development, and site plan is located in case file N–75701, which is available for review at the BLM Las Vegas Field Office at the above address.

Clark County is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act.

Subject to limitations prescribed by law and regulation, prior to patent issuance the holder of any right-of-way grant within the lease area may be given the opportunity to amend the right-of-way grant for conversion to a new term, including perpetuity, if applicable.

The land identified is not needed for any Federal purpose. The lease and/or conveyance is consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. Clark County has not applied for more than the 640-acre limitation for public purpose uses in a year and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and/or conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Any lease and/or conveyance will also be subject to valid existing rights, will contain any terms or conditions required by law (including, but not limited to, any terms or conditions required by 43 CFR 2741.4), and will contain an appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer. Any lease and/or conveyance will also be subject to:

1. Right-of-way N–66444 for road and sewer purposes granted to the City of Las Vegas, its successors or assigns, pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1761);

2. Right-of-way N–52803 for detention basin purposes granted to the City of Las Vegas, its successors or assigns, pursuant to FLPMA;

3. Right-of-way N–62096 for water pipeline purposes granted to the Las Vegas Valley Water District, its successors or assigns, pursuant to FLPMA;

4. Right-of-way N–66793 for telephone line purposes granted to the Central Telephone Co., its successors or assigns, pursuant to FLPMA; and

5. Right-of-way N–74688 and Nev043546 for power line purposes granted to Nevada Power Co., its successors or assigns, pursuant to FLPMA;

On December 29, 2010 the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability of the land for a regional park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

Only written comments to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Any adverse comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification of the land described in this notice will become effective on February 28, 2011. The land will not be available for lease or conveyance until after the classification becomes effective.

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: 43 CFR 2741.5.

Beth Ransel,

Acting Assistant Field Manager, Division of Lands, Las Vegas Field Office.

[FR Doc. 2010–32870 Filed 12–28–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2011 is 4.125 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2010, through and including September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Brooke Miller-Levy, Water and Environmental Resources Division, Denver, Colorado 80225; telephone: 303–445–2889.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 4.125 percent for fiscal year 2011.

This rate has been computed in accordance with Section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 4.1620 percent. This average value is then rounded to the nearest one-eighth of a point, resulting in 4.125 percent.

The rate of 4.125 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: December 3, 2010.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2010–32801 Filed 12–28–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation and are new, modified, discontinued, or completed since the last publication of this notice on July 22, 2010. From the date of this publication, future notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Services Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR **Federal Register**
IDD Irrigation and Drainage District
ID Irrigation District
LCWSP Lower Colorado Water Supply Project
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New contract action:

19. East Columbia Basin ID, Columbia Basin Project, Washington: Amendment No. 1 to Supplement No. 2 to the 1976 Master Water Service Contract providing for the delivery of up to an additional 5,450.5 acre-feet of project water for the irrigation of 1,816.8 additional acres located within the Odessa Subarea under this contract.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

44. San Luis WD, Meyers Farms Family Trust, and Reclamation, CVP, California: Revision of an existing contract between San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,000 to 10,000 acre-feet and an increase in the storage capacity of the bank to 100,000 acre-feet.

45. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California: Negotiation of a 5-year wheeling agreement with an effective date of March 2011 is pending. The current wheeling agreement with the State of California, Department of Water Resources expires February 28, 2011. The renewed long-term water service contract for up to 850 acre-feet was executed February 28, 2005, for 25 years.

46. Byron-Bethany ID, CVP, California: The current wheeling agreement, which has a February 28, 2012, expiration date, is under negotiation. The wheeling agreement with the State of California, Department of Water Resources, allows for the conveyance and delivery of CVP water on behalf of Byron-Bethany ID to Musco Family Olive Company through the California State Aqueduct. The renewed long-term water service contract was executed July 25, 2005, for 25 years.

Modified contract action:

13. Byron-Bethany ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal, and a proposed long-term three-party operational water exchange contract amongst Byron-Bethany ID, Reclamation, and the City of Tracy. The exchange of nonproject water is for treatment and ultimate delivery to Tracy Hills Development.

Completed contract actions:

7. El Dorado ID, CVP, California: Execution of long-term Warren Act contracts for conveyance of nonproject water (one contract for Weber Reservoir and pre-1914 ditch rights in the amount of 4,560 acre-feet annually, and one contract for Project 184 water in the amount of 17,000 acre-feet annually). The contracts will allow CVP facilities to be used to deliver nonproject water to the District for use within its service area. The Weber Reservoir and pre-1914 ditch rights contract for 4,560 acre-feet was executed on September 9, 2010. The contract for 17,000 acre-feet of Project 184 water remains pending.

18. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California: Renewal of the long-term water service contract for up to 850 acre-feet. The contract was executed February 28, 2005. The wheeling agreement for conveyance through the California State Aqueduct was executed on March 19, 2010.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

New contract actions:

25. Arizona Water Company (Superstition System), CAP, Arizona: Proposed Amendment No. 1 to Arizona Water Company's subcontract to allow for the annual delivery of up to 6,285 acre-feet of CAP water for M&I purposes within its Superstition System.

26. Valley Utilities Water Company, CAP, Arizona: Proposed transfer of Valley Utilities' 250 acre-feet per year CAP entitlement to the Central Arizona Water Conservation District to meet its Central Arizona Ground Water Replenishment District function.

27. Arizona-American Water Company and Lake Havasu City, BCP, Arizona: Proposed exhibit revisions to the Company's and Lake Havasu's contract service areas to include certain lands into Lake Havasu's contract service area and simultaneously exclude those same lands from the Company's contract service area.

28. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Execute a 1-year lease for the delivery of not to exceed 20,000 acre-feet of CAP water from the Tribe to the Town.

Completed contract actions:

5. City of Yuma, BCP, Arizona: Supplemental and amendatory contract to provide for additional point of delivery for a new pump station to be constructed on the Gila Gravity Main Canal, with initial intake capacity of 20 million gallons per day, building up to 40 million gallons per day at full design capacity. Contract executed March 31, 2010.

14. City of Needles and the Metropolitan Water District of Southern California, LCWSP, California: Proposed amendment No. 1 to Contract No. 06–XX–30–W0452 to extend the timeframe for completion of a study that is required by the contract and to address the deposits to be made by the District into the trust fund account. Contract executed May 3, 2010.

18. Arizona-American Water Company, BCP, Arizona: Amend Exhibit

C to Contract No. 00–XX–30–W0391 to include an emergency interconnection with Lake Havasu City as a point of delivery. Contract executed May 8, 2010.

19. Mohave County Water Authority, BCP, Arizona: Amend Exhibit D to Contract No. 5–07–30–W0320 to (1) Delete the reference to a subcontract dated August 12, 2004, with Arizona-American Water Company for 950 acre-feet of fifth- and/or sixth-priority water because that subcontract has been terminated; (2) recognize that an additional 1,000 acre-feet of fourth-priority water was added under a subcontract with Bullhead City from 6,000 acre-feet of fourth-priority water to 7,000 acre-feet of fourth-priority water; (3) recognize that an additional 1,000 acre-feet of fourth-priority water was added under a subcontract with Lake Havasu City from 6,000 acre-feet of fourth-priority water to 7,000 acre-feet of fourth-priority water; and (4) recognize that a new subcontract has been entered into between the Authority and Mohave Valley IDD for 1,000 acre-feet of fourth-priority water. Contract executed April 26, 2010.

20. Mohave County Water Authority, BCP, Arizona: Amend Exhibit E to Contract No. 5–07–30–W0320 to (1) supersede and replace the "Procedures for Obtaining a Subcontract From the Mohave County Water Authority" dated December 12, 1995, with "Mohave County Water Authority-Operating Procedure No. 04–01" amended October 21, 2009, and (2) include a copy of "Mohave County Water Authority-Operating Procedure No. 09–01" adopted October 21, 2009. Contract executed April 26, 2010.

21. Water Utility of Greater Buckeye, CAP, Arizona: Proposed assignment of the Utility's CAP entitlement of 43 acre-feet annually to the Valencia Water Company per the Utility's request and as recommended by the Arizona Department of Water Resources. Contract executed May 24, 2010.

22. Tonto Hills Utility Company, CAP, Arizona: Proposed assignment of the Company's CAP entitlement of 71 acre-feet annually to the Tonto Hills Domestic Water Improvement District per the District's request pending recommendation by the Arizona Department of Water Resources. Contract executed June 22, 2010.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract actions:

1.(c) Liman, LLC, Aspinall Storage Unit, CRSP: Liman, LLC has requested a 40-year water service contract for 3 acre-feet of M&I water out of Blue Mesa Reservoir, which requires Liman to present a Plan of Augmentation to the Division 4 Water Court.

1.(d) Ranch Properties, Aspinall Storage Unit, CRSP: Ranch Properties has requested a 40-year water service contract for 3 acre-feet of M&I water out of Blue Mesa Reservoir, which requires Ranch Properties to present a Plan of Augmentation to the Division 4 Water Court.

1.(e) Leroux Creek Acre Domestic Water Company, Aspinall Storage Unit, CRSP: Leroux Creek Acre has requested a 40-year water service contract for 3 acre-feet of M&I water out of Blue Mesa Reservoir, which requires Leroux to present a Plan of Augmentation to the Division 4 Water Court.

37. Voiles, Katherine Marie and William Thomas, Mancos Project, Colorado: Katherine Marie and William Thomas Voiles have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 2–A. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.38 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

38. Hanson, Brian E. and Joan M. Brake-Hanson, Mancos Project, Colorado: Brian E. Hanson and Joan M. Brake-Hanson have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 5. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.12 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

Modified contract action:

17. State of Colorado, Animas-La Plata Project, Colorado and New Mexico: Cost-sharing/repayment contract for up to 10,460 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

Completed contract actions:

8. Mancos Water Conservancy District, Mancos Project, Colorado: The Congress has authorized funding, not to exceed $8.25 million, for the Jackson Gulch Rehabilitation Project to include the inlet and outlet canals, and operations facilities. The District will enter into a contract for repayment of 35 percent of the cost of the project or $2.9 million, whichever is less. Contract executed July 9, 2010.

13. Provo River Water Users Association, Central Utah Water Conservancy District, Jordan Valley Water Conservancy District, Provo Reservoir Water Users Company, and Bureau of Reclamation: Carriage contract for up to 358 cfs in the enclosed Provo Reservoir Canal. This contract is pursuant to the Warren Act; section 4 of the Provo River Project Transfer Act (Pub. L. 108–719); and section 2 of the Act of December 19, 2002 (Pub. L. 107–366). Contract executed February 24, 2010.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

New contract action:

49. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Intent to enter into a long-term irrigation or miscellaneous use water service contract to provide up to 14,000 acre-feet of water annually for a term of up to 40 years, to authorized areas in conformance with the Dakota Water Resources Act of 2000.

Modified contract actions:

31. State of Kansas Department of Wildlife and Parks, Glen Elder Unit, P–SMBP, Kansas: Intent to enter into a contract for the remaining conservation storage in Waconda Lake for recreation and fish and wildlife purposes.

38. Frenchman Valley ID, Frenchman-Cambridge Division, P–SMBP, Nebraska: Intent to enter into a contract for repayment of extraordinary maintenance work on stilling basin outlet works at Enders Dam, in accordance with Subtitle G of Pub. L. 111–11.

40. Individual irrigators, Cambridge Unit, Frenchman-Cambridge Division, P–SMBP, Nebraska: Intent to enter into a long-term excess capacity contract for conveyance of nonproject irrigation water through project facilities.

Discontinued contract actions:

36. Loup Valley's Rural Public Power District, North Loup Division, P–SMBP, Nebraska: Proposed sale of Reclamation's share in joint-owned power line to the co-owner of the line.

39. H & RW ID, Frenchman-Cambridge Division, P–SMBP, Nebraska: Consideration of a request for a repayment contract for outlet works modification at Enders Dam, in accordance with the Omnibus Public Lands Management Act of 2009.

Completed contract actions:

13. Colorado Springs Utilities, Colorado-Big Thompson Project, Colorado Springs, Colorado: Consideration of a request for a long-term agreement for water substitution and power interference in the Colorado-Big Thompson Project. Water substitution agreement executed February 22, 2010, and the power

interference agreement executed October 10, 2010.

23. Helena Sand & Gravel, Helena Valley Unit, P–SMBP, Montana: Request for a long-term water service contract for M&I purposes up to 1,000 acre-feet per year. Contract executed January 1, 2010.

29. Glen Elder ID, Glen Elder Unit, P–SMBP, Kansas: Intent to enter into a contract for repayment of extraordinary maintenance work on the spillway structure in accordance with ARRA. Contract executed August 26, 2010.

30. Glen Elder ID, Glen Elder Unit, P–SMBP, Kansas: Amendment to extend the expiration date of the water service contract and renewal of long-term water service contract. Contract executed July 29, 2010.

35. State of Wyoming, Pathfinder Dam and Reservoir, North Platte Project, Wyoming: The state of Wyoming has requested a water service contract for water to be stored in Pathfinder Reservoir associated with the implementation of the Pathfinder Modification Project. Contract executed June 14, 2010.

37. Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Intent to enter into a contract for repayment of extraordinary maintenance work on the Pole Hill Canal in accordance with ARRA. Contract executed July 8, 2010.

41. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of a request to amend the existing water service contract to adjust the annual project water payments. Contract executed September 14, 2010.

Dated: November 22, 2010.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2010–32751 Filed 12–28–10; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–727]

In the Matter of Certain Underground Cable and Pipe Locators; Notice of Commission Decision Not To Review Initial Determinations Terminating the Investigation Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations ("IDs") (Order Nos. 5 and 6) terminating the investigation based on a settlement agreement and withdrawal of the complaint as to one respondent.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on July 19, 2010, based upon a complaint filed on behalf of Radiodetection, Ltd. of the United Kingdom ("Radiodetection") on June 10, 2010. 75 FR 41890 (July 19, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain underground cable and pipe locators that infringe certain claims of U.S. Patent No. 6,268,731. The complaint named as respondents Vivax-Metrotech Corp. of Santa Clara, California ("Vivax-Metrotech"); SebaKMT of Baunach, Germany ("SebaKMT"); and Leidi Utility Supply Ltd. of Shanghai, China ("Leidi Utility").

On November 15, 2010, Complainant Radiodetection and Respondents Vivax-Metrotech and SebaKMT filed a joint motion pursuant to 19 CFR 210.21(b) to terminate the investigation as to all respondents, including Leidi Utility, based on a settlement agreement. On November 22, 2010, Radiodetection and Leidi Utility filed a joint motion pursuant to 19 CFR 210.21(a) seeking to withdraw the complaint and terminate the investigation with respect to Leidi Utility. On November 29, 2010, the Commission investigative attorney filed a response in support of the motions to terminate. On December 1, 2010, the ALJ issued Order Nos. 5 and 6, granting the motions. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: December 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32714 Filed 12–28–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 423(c) of the Tax Reform Act of 1986, as amended (19 U.S.C. 2703 note), requires the United States International Trade Commission to determine annually the amount (expressed in gallons) that is equal to 7 percent of the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. This determination is to be used to establish the "base quantity" of imports of fuel ethyl alcohol with a zero percent local feedstock requirement that can be imported from U.S. insular possessions or CBERA-beneficiary countries. The base quantity to be used by U.S. Customs and Border Protection in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption, as determined by the Commission.

For the 12-month period ending September 30, 2010, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 12.506 billion gallons; 7 percent of this amount is 875.4 million gallons (these figures have been rounded). Therefore, the base quantity for 2011 should be 875.4 million gallons. The Commission's determination is based on official data of the U.S. Department of Energy and the U.S. Department of Commerce.

ADDRESSES: All Commission offices, including the Commission's hearing

rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: For information specific to this investigation, contact project leader Douglas Newman (202) 205–3328, *douglas.newman@usitc.gov,* in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart, *william.gearhart@usitc.gov,* of the Commission's Office of the General Counsel at (202) 205–3091. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Commission published its notice instituting this investigation in the **Federal Register** of March 21, 1990 (55 FR 10512), and published its most recent previous determination for the 2010 amount in the **Federal Register** of December 23, 2009 (74 FR 68282). The Commission uses official statistics of the U.S. Department of Energy and the U.S. Department of Commerce to make these determinations.

By order of the Commission.
Issued: December 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32696 Filed 12–28–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–449 and 731–TA–1118–1120 (Remand)]

Light-Walled Rectangular Pipe and Tube From China, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice that it is inviting the parties to the North American Free Trade Agreement (NAFTA) Chapter 19 panel proceeding in *Light-Walled Rectangular Pipe and Tube from Mexico,* USA–MEX–1904–04, to file comments in the remand proceeding ordered by the NAFTA binational panel. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

DATES: *Effective Date:* Date of Publication in **Federal Register.**

FOR FURTHER INFORMATION CONTACT: David B. Fishberg (202–708–2614) or Andrea C. Casson (202–205–3105), Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record of Investigation Nos. 701–TA–449 and 731–TA–1118–1120 may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—In July 2008, the Commission determined that an industry in the United States was materially injured by reason of subsidized imports of light-walled rectangular pipe and tube ("LWR pipe and tube") from China, and imports of LWR pipe and tube from China, Korea, and Mexico that were found to be sold at less than fair value. Nacional de Acero S. A. De C. V. subsequently challenged the Commission's determination concerning imports from Mexico, under the binational panel procedures set out in Chapter 19 of the North American Free Trade Agreement ("NAFTA").

A NAFTA Panel issued an opinion in the matter on November 26, 2010. In its opinion, the Panel remanded the matter to the Commission with instructions that the Commission address:

(I) the relationship between the 2008 announced price increases and the pendency of the investigation, and

(II) the Complainant's attempt to rebut the presumption that any market changes in 2008 were the result of the filing of the petition and Commerce's preliminary affirmative determinations. In all other respects the Panel affirmed the Commission's opinion.

Participation in the proceeding.—Only those persons who were both interested parties to the original investigation (*i.e.,* persons listed on the Commission Secretary's service list) and who participated in the NAFTA Chapter 19 panel proceeding may participate in the remand proceeding. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written Submissions.—The Commission is not reopening the record in this proceeding for submission of new factual information. The Commission will, however, permit parties to file comments pertaining to the issues on which the Panel has remanded this matter. These comments must be limited to the precise issues in the Panel's remand instructions quoted above, and must be based solely on the information already in the Commission's record and may not include additional factual information. The deadline for filing comments is January 7, 2011. Comments shall be limited to no more than ten (10) double-spaced and single-sided pages of textual material.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the NAFTA Chapter 19 panel proceeding must be served on all other such parties, and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

By order of the Commission.
Issued: December 23, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32776 Filed 12–28–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–664]

In the Matter of Certain Flash Memory Chips and Products Containing Same; Notice of Commission Decision Not To Review the ALJ's Final Initial Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") final initial determination ("ID") issued on October 22, 2010, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 18, 2008, based on a complaint filed by Spansion, Inc. and Spansion LLC both of Sunnyvale, California (collectively, "Spansion"). 73 FR 77059–061 (Dec. 18, 2008). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory chips and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,380,029 ("the '029 patent"); 6,080,639 ("the '639 patent"); 6,376,877 ("the '877 patent"); and 5,715,194 ("the '194 patent"). The '029 patent and the '639 patent were subsequently terminated from the investigation. The complaint named over thirty respondents. On March 12, 2010, the complaint and notice of investigation were amended to terminate several respondents from the investigation and to add certain entities as respondents. 75 FR 11909–910 (Mar. 12, 2010).

On October 22, 2010, the ALJ issued his final ID, finding no violation of section 337 by Respondents with respect to any of the asserted claims of the two remaining patents. Specifically, the ALJ found that the accused products do not infringe the asserted claims of the '877 patent. The ALJ also found that none of the cited references anticipated the asserted claims and that none of the cited references rendered the asserted claims of the '877 patent obvious. The ALJ further found that an industry in the United States that practices or exploits the '877 patent does not exist, nor is such an industry in the process of being established, and concluded that Spansion failed to satisfy the domestic industry requirement of section 337 (19 U.S.C. 1337(a)(2) and (3)). With respect to the '194 patent, the ALJ found that certain accused products do not infringe its asserted claims. The ALJ, however, found that other accused products met all the limitations of the asserted claims but found that a prior art reference, United States Patent No. 5,621,684 to Jung, anticipated the asserted claims and rendered them invalid. The ALJ also found that the asserted claims were not obvious in light of the references respondents relied upon to prove obviousness. The ALJ further found that an industry in the United States that practices or exploits the '194 patent does not exist, nor is such an industry in the process of being established, and concluded that Spansion failed to satisfy the domestic industry requirement of section 337.

On November 8, 2010, the Commission investigative attorney ("IA") filed a petition for review of the ID, seeking review of the ALJ's determination that Spansion failed to satisfy the domestic industry requirement by relying on licensing efforts that occurred after the complaint was filed. The next day, Respondents filed a joint contingent petition for review, asking the Commission to review certain findings in the ID in the event that the Commission decides to review the ID. Spansion did not petition the Commission for review of any findings in the ID. On November 16, 2010, Spansion filed a combined response to the IA's petition for review and Respondents' joint contingent petition for review. Also on November 16, 2010, Respondents filed a joint response to the IA's petition for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: December 23, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32763 Filed 12–28–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–664]

In the Matter of Certain Flash Memory Chips and Products Containing Same; Notice of Commission Decision Not To Review the ALJ'S Final Initial Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") final initial determination ("ID") issued on October 22, 2010, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's

electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

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On October 22, 2010, the ALJ issued his final ID, finding no violation of section 337 by Respondents with respect to any of the asserted claims of the two remaining patents. Specifically, the ALJ found that the accused products do not infringe the asserted claims of the '877 patent. The ALJ also found that none of the cited references anticipated the asserted claims and that none of the cited references rendered the asserted claims of the '877 patent obvious. The ALJ further found that an industry in the United States that practices or exploits the '877 patent does not exist, nor is such an industry in the process of being established, and concluded that Spansion failed to satisfy the domestic industry requirement of section 337 (19 U.S.C. 1337(a)(2) and (3)). With respect to the '194 patent, the ALJ found that certain accused products do not infringe its asserted claims. The ALJ, however, found that other accused products met all the limitations of the asserted claims but found that a prior art reference, United States Patent No. 5,621,684 to Jung, anticipated the asserted claims and rendered them invalid. The ALJ also found that the asserted claims were not obvious in light of the references respondents relied upon to prove obviousness. The ALJ further found that an industry in the United States that practices or exploits the '194 patent does not exist, nor is such an industry in the process of being established, and concluded that Spansion failed to satisfy the domestic industry requirement of section 337.

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Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: December 23, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32759 Filed 12–28–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Clean Water Act

Notice is hereby given that on December 22, 2010, a proposed Consent Decree in *United States and the State of Ohio* v. *Northeast Ohio Regional Sewer District,* Civil Action No. 10–cv–02895 was lodged with the United States District Court for the Northern District of Ohio.

In this action the United States and the State of Ohio seeks civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* in connection with the Northeast Ohio Regional Sewer District's ("NEORSD") operation of its municipal wastewater and sewer system. The Complaint alleges that the NEORSD's discharges from its combined sewer overflows ("CSOs") violate the Clean Water Act because the discharge of sewage violates limitations and conditions in NEORSD's National Pollutant Discharge Elimination System (NPDES) permits. The Complaint further alleges that NEORSD's bypasses of wastewater of its treatment plants' processes also violate its NPDES permits.

Under the proposed Consent Decree, NEORSD will be required to implement injunctive measures, including the construction of seven deep underground tunnel systems—to reduce its CSO discharges—and construction of treatment plant expansions, for a total cost of approximately $3 billion. NEORSD will also invest $42 million in green infrastructure that will further reduce its CSO discharge by 44 million gallons. The Consent Decree allows NEORSD the opportunity to propose additional green infrastructure projects in exchange for a reduction in scope of the traditional infrastructure projects. NEORSD will pay $1.2 million in civil penalties to be split evenly between the United States and the State of Ohio. NEORSD will also spend $1 million to operate a permanent hazardous waste collection center in Cuyahoga County and $800,000 to improve other water resources. Under the proposed Consent Decree, the injunctive relief is to be implemented over a 25-year period.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed 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. *Northeast Ohio Regional Sewer District,* D.J. Ref. 90–5–1–1–08177/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, OH 44113 (contact Assistant United States Attorney Steven J. Paffilas (216) 622–3698), and at U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Associate Regional Counsel Nicole Cantello (312) 886–2870)). During the public comment period, the proposed Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/*

Consent_Decrees.html. A copy of the proposed 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 $28.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–32661 Filed 12–28–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 3, 2010, Siegfried (USA), 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II
Oxycodone (9143)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 28, 2011.

Dated: December 20, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–32855 Filed 12–28–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement

AGENCY: Federal Bureau of Prisons, U.S. Department of Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for development of a Federal Correctional Institution and Federal Prison Camp by the U.S. Department of Justice, Federal Bureau of Prisons (BOP). Land under consideration for development consists of areas located on BOP-owned property comprising the U.S. Penitentiary (USP) in Leavenworth, Kansas.

Background

The Federal Bureau of Prisons (BOP) is responsible for carrying out judgments of the federal courts whenever a period of confinement is ordered. The mission of the BOP is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

The BOP is facing continuous growth in the number of federal inmates with projections showing the federal inmate population increasing from 210,227 inmates at the end of fiscal year 2010 to over 226,000 inmates by the end of fiscal year 2013. As such, the demand for bedspace within the federal prison system continues to grow at a significant rate. At the present time, the federal inmate population exceeds the combined rated capacities of the existing 116 federal correctional facilities.

The federal inmate population has grown dramatically over the past two decades. While the BOP is no longer experiencing the dramatic population increases of between 10,000 and 11,000 inmates per year that occurred from 1998 to 2001, the increases are still significant and a net growth of over 6,000 inmates is projected for FY 2011 and 5,600 is projected for FY 2012. The federal inmate population is projected to increase and continue to exceed the rated capacity of the BOP's 116 institutions and current contract facilities. Currently, the BOP is 36 percent above rated capacity system-wide in the federal prison system, 43 percent over rated capacity at medium security facilities, and 53 percent over rated capacity at high security institutions. As in the past, the BOP will continue to increase the number of beds through additional contract beds, acquisition and adaptation of existing facilities, and new prison construction as funding permits. Adding capacity through these various means, allows the BOP the opportunity to work towards keeping prison crowding at manageable levels to ensure both public safety and the safety of inmates within the BOP institutions.

In the face of the continuing increase in the federal prison population, one way the BOP has expanded its capacity is through construction of new institutions. As part of this effort, the BOP has a facilities planning program featuring the identification and evaluation of sites for new facilities. The BOP routinely identifies prospective sites that may be appropriate for development of new federal correctional facilities determined by the need for such facilities in various parts of the country and the resources available to meet that need.

The BOP routinely screens and evaluates private and public properties located throughout the nation for possible use and development. Over the past decade, the BOP has examined prospective sites for new correctional facilities development in Alabama, Kentucky, New Hampshire, Arizona, Mississippi, West Virginia, California and other locations around the country and has undertaken environmental impact studies in compliance with the National Environmental Policy Act of 1969, as amended.

Proposed Action

The BOP is facing increased bedspace shortages throughout the federal prison system. Over the past decade, a significant influx of inmates has entered the federal prison system with a large portion of this influx originating from the north central region of the United States. In response, the BOP has committed significant resources to identifying and developing sites for new federal correctional facilities within this region including development of facilities in Florence, Colorado; Terre Haute, Indiana; Greenville, Illinois; and Waseca, Minnesota. Even with the development of new and expanded facilities, projections show the federal inmate population continuing to increase, placing additional demands for bedspace within the BOP's North Central Region.

In response, the BOP has undertaken preliminary investigations in an effort to identify prospective sites capable of accommodating federal correctional facilities and communities willing to host such facilities. Through this process, the BOP has identified potential locations for development of new federal correctional facilities and several sites are under active consideration. These potential sites were subjected to initial studies by the BOP and those considered suitable for correctional facility development will be evaluated further by the BOP in a DEIS that will analyze the potential impacts of facility construction and operation.

The Process

The process of evaluating the potential environmental impacts associated with federal correctional facility development and operation involves the analysis of many factors and features including, but not limited to: Topography, geology, soils, hydrology, biological resources, cultural resources, hazardous materials, visual and aesthetics features, fiscal considerations, population/employment/housing characteristics, community services and facilities, land uses, utility services, transportation systems, meteorological conditions, air quality, and noise.

Alternatives

In developing the DEIS, the No Action alternative, other actions considered and eliminated, and alternative development areas for the proposed Federal Correctional Institution and Federal Prison Camp will be examined. The areas examined will consist of BOP-owned property contiguous to the existing Leavenworth Institution and will be further defined in the EIS process.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Public Scoping Meeting will be held at 7 p.m., January 20, 2011, at the Riverfront Community Center (123 S. Esplanade Street, Leavenworth, Kansas). The meeting location, date, and time will be well-publicized and have been arranged to allow for the public as well as interested agencies and organizations to attend and formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Scoping Meeting is being held to provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

Availability of DEIS

Public notice will be given concerning the availability of the DEIS for public review and comment.

Contact

Questions concerning the proposed action and the DEIS may be directed to: Richard A. Cohn, Chief, or Bridgette Lyles, Site Selection Specialist, Capacity Planning and Site Selection Branch, U.S. Department of Justice, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, *Telephone:* 202–514–6470/*Facsimile:* 202–616–6024/*E-mail: siteselection@bop.gov.*

Dated: December 17, 2010.

Richard A. Cohn,

Chief, Capacity Planning and Site Selection.

[FR Doc. 2010–32317 Filed 12–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustment for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustment.

SUMMARY: This notice describes MSHA's revised fee schedule for testing, evaluating, and approving mining products as provided by 30 CFR part 5. MSHA charges applicants a fee to cover its direct and indirect costs associated with testing, evaluating, and approval of equipment and materials manufactured for use in the mining industry. The new fee schedule, effective January 1, 2011, is based on MSHA's direct and indirect costs for providing services during fiscal year (FY) 2010.

DATES: This fee schedule is effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: John P. Faini, Chief, Approval and Certification Center, 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

I. Background

Under 30 CFR 5.50, each fee schedule shall remain in effect for at least one year and be subject to revision at least once every three years. MSHA's existing fee schedule, revised December 24, 2008 (73 FR 79195) became effective January 1, 2009.

Under 30 CFR 5.30(a), Part 15 fees for services provided to MSHA by other organizations may be set by those organizations. In addition, under 30 CFR 5.40, when the nature of the product requires MSHA to test and evaluate the product at a location other than on MSHA premises, MSHA is allowed to charge actual travel expenses in addition to the fees charged for evaluation and testing.

II. Fee Computation

MSHA computed the 2011 fees using FY 2010 costs for baseline data. MSHA calculated a weighted-average based on the direct and indirect costs to applicants for testing, evaluation, and approval services provided in FY 2010. From this average, MSHA computed a single hourly rate, which applies uniformly to all applications.

As a result of this process, MSHA has determined that as of January 1, 2011, the fee will be $97 per hour for services provided.

III. Applicable Fee

- Applications postmarked before January 1, 2011: MSHA will process these applications under the 2009 hourly rate of $90.
- Applications postmarked on or after January 1, 2011: MSHA will process these applications under the 2011 hourly rate of $97. This information is available on MSHA's Web site at *http://www.msha.gov.*

Dated: December 22, 2010.

Joseph A. Main,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 2010–32744 Filed 12–28–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation; Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Claim for Continuance of Compensation (CA–12). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 28, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, e-mail *Alvarez.Vincent@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs administers the Federal Employees' Compensation Act, 5 U.S.C. 8133. Under the Act, eligible dependents of deceased employees receive compensation benefits on account of the employee's death. OWCP has to monitor death benefits for current marital status, potential for dual benefits, and other criteria for qualifying as a dependent under the law. The CA–12 is sent annually to beneficiaries in death cases to ensure that their status has not changed and that they remain entitled to benefits. The information collected is used by OWCP claims examiners to ensure that death benefits being paid are correct, and that payments are not made to ineligible survivors. This information collection is currently approved for use through May 31, 2011.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks extension of approval to collect this information collection in order to ensure that death benefits being paid are correct.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Claim for Continuance of Compensation.

OMB Number: 1240–0015.

Agency Number: CA–12.

Affected Public: Individuals or households.

Total Respondents: 4,570.

Total Annual Responses: 4,570.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 379.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $2,011.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 22, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010–32742 Filed 12–28–10; 8:45 am]

BILLING CODE 4510–CH–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10–17]

Notice of Quarterly Report (July 1, 2010–September 30, 2010)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter July 1, 2010 through September 30, 2010, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with section 612(b) of the Act.

Dated: December 22, 2010.

T. Charles Cooper,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	*Obligated*	*Objectives*	*Cumulative disbursements*	*Measures*
Country: Madagascar *Year:* 2010 *Quarter 4* *Total Obligation:* $87,998,166 *Entity to which the assistance is provided:* MCA Madagascar *Total Quarterly Disbursement:* $214,736				
Land Tenure Project	$30,123,098	*Increase Land Titling and Security.*	$29,304,770	Area secured with land certificates or titles in the Zones. Legal and regulatory reforms adopted. Number of land documents inventoried in the Zones and Antananarivo. Number of land documents restored in the Zones and Antananarivo. Number of land documents digitized in the Zones and Antananarivo. Average time for Land Services Offices to issue a duplicate copy of a title. Average cost to a user to obtain a duplicate copy of a title from the Land Services Offices. Number of land certificates delivered in the Zones during the period. Number of new guichets fonciers operating in the Zones. The 256 Plan Local d'Occupation Foncier—Local Plan of Land Occupation (PLOFs) are completed.
Financial Sector Reform Project.	$25,705,099	*Increase Competition in the Financial Sector.*	$23,535,781	Volume of funds processed annually by the national payment system. Number of accountants and financial experts registered to become CPA. Number of Central Bank branches capable of accepting auction tenders. Outstanding value of savings accounts from CEM in the Zones. Number of MFIs participating in the Refinancing and Guarantee funds. Maximum check clearing delay. Network equipment and integrator. Real time gross settlement system (RTGS). Telecommunication facilities. Retail payment clearing system. Number of CEM branches built in the Zones. Number of savings accounts from CEM in the Zones. Percent of Micro-Finance Institution (MFI) loans recorded in the Central Bank database.
Agricultural Business Investment Project.	$13,687,987	*Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.*	$13,582,533	Number of farmers receiving technical assistance. Number of marketing contracts of ABC clients. Number of farmers employing technical assistance. Value of refinancing loans and guarantees issued to participating MFIs (as a measure of value of agricultural and rural loans). Number of Mnistère de l'Agriculture, de l'Elevage et de la Pêche-Ministry of Agriculture, Livestock, and Fishing (MAEP) agents trained in marketing and investment promotion. Number of people receiving information from Agricultural Business Center (ABCs) on business opportunities.
Program Administration [1] and Control, Monitoring and Evaluation.	$18,481,991	.....	$17,789,908	
Pending subsequent reports.[2]	.....	.....	$1,368,813	

FY2010 Madagascar post-compact disbursement related to final payment of audit expenses.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Honduras *Year:* 2010 *Quarter 4* *Total Obligation:* $205,000,000 *Entity to which the assistance is provided:* MCA Honduras *Total Quarterly Disbursement:* $25,043,989				
Rural Development Project	$68,273,380	*Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.*	$61,630,024	Number of program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops. Number of business plans prepared by program farmers with assistance from the implementing entity. Total value of net sales. Total number of recruited farmers receiving technical assistance. Value of loans disbursed to farmers, agribusiness, and other producers and vendors in the horticulture industry, including Program Farmers, cumulative to date, Trust Fund Resources. Number of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI–VOCA). Number of hectares under irrigation. Number of farmers connected to the community irrigation system.
Transportation Project	$120,591,240	*Reduce transportation costs between targeted production centers and national, regional and global markets.*	$111,068,610	Freight shipment cost from Tegucigalpa to Puerto Cortes. Average annual daily traffic volume—CA–5. International roughness index (IRI)—CA–5. Kilometers of road upgraded—CA–5. Percent of contracted road works disbursed—CA–5. Average annual daily traffic volume—secondary roads. International roughness index (IRI)—secondary roads. Kilometers of road upgraded—secondary roads. Average annual daily traffic volume—rural roads. Average speed—Cost per journey (rural roads). Kilometers of road upgraded—rural roads. Percent disbursed for contracted studies Value of signed contracts for feasibility, design, supervision and program mgmt contracts. Kilometers (km) of roads under design. Number of Construction works and supervision contracts signed. Kilometers (km) of roads under works contracts.
Program Administration[1, 3] and Control, Monitoring and Evaluation.	$16,135,380	.....	$24,767,387	
Pending subsequent reports.[2]			−$3	
Projects	*Obligated*	*Objectives*	*Cumulative disbursements*	*Measures*
Country: Cape Verde *Year:* 2010 *Quarter 4* *Total Obligation:* $110,078,488 *Entity to which the assistance is provided:* MCA Cape Verde *Total Quarterly Disbursement:* $18,659,128				
Watershed and Agricultural Support Project.	$12,031,549	*Increase agricultural production in three targeted watershed areas on three islands.*	$10,779,392	Productivity: Horticulture, Paul watershed. Productivity: Horticulture, Faja watershed. Productivity: Horticulture, Mosteiros watershed. Number of farmers adopting drip irrigation: All intervention watersheds (Paul, Faja and Mosteiros) (incremental). Area irrigated with drip irrigation: All intervention watersheds (Paul, Faja and Mosteiros) (incremental). Irrigation Works: Percent contracted works disbursed. All intervention watersheds (Paul, Faja and Mosteiros) (incremental). Number of reservoirs constructed in all intervention watersheds (Paul, Faja and Mosteiros) (incremental).

Projects	*Obligated*	*Objectives*	*Cumulative disbursements*	*Measures*
Infrastructure Improvement Project.	$82,630,208	*Increase integration of the internal market and reduce transportation costs.*	$67,214,181	Number of farmers that have completed training in at least 3 of 5 core agricultural disciplines: All intervention watersheds (Paul, Faja and Mosteiros) (incremental). Travel time ratio: Percentage of beneficiary population further than 30 minutes from nearest market. Kilometers of roads rehabilitated. Percent of contracted Santiago Roads works disbursed (cumulative). Percent of contracted Santo Antao Bridge works disbursed (cumulative). Port of Praia: Percent of contracted port works disbursed (cumulative). Cargo village: Percent of contracted works disbursed (cumulative). Quay 2 improvements: Percent of contracted works disbursed (cumulative). Access road: Percent of contracted works disbursed (cumulative).
Private Sector Development Project.	$1,931,223	*Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.*	$1,555,936	MFI portfolio at risk, adjusted (level).
Program Administration [1, 3] and Control, Monitoring and Evaluation.	$13,485,508	.....	$23,248,592	
Pending subsequent reports.[2]	.....	.....	$480	

Projects	*Obligated*	*Objectives*	*Cumulative disbursements*	*Measures*
Country: Nicaragua *Year:* 2010 *Quarter 4* *Total Obligation:* $113,500,000 *Entity to which the assistance is provided:* MCA Nicaragua *Total Quarterly Disbursement:* $7,519,183				
Property Regularization Project.	$7,180,454	*Increase investment by strengthening property rights.*	$5,386,594	Automated database of registry and cadastre installed in the 10 municipalities of Leon. Value of land, urban. Value of land, rural. Time to conduct a land transaction. Number of additional parcels with a registered title, urban. Number of additional parcels with a registered title, rural. Area covered by cadastral mapping. Cost to conduct a land transaction.
Transportation Project	$57,999,999	*Reduce transportation costs between Leon and Chinandega and national, regional and global markets.*	$56,893,204	Annual average daily traffic volume: N1 Section R1. Annual average daily traffic volume: N1 Section R2. Annual average daily traffic volume: Port Sandino (S13). Annual average daily traffic volume: Villanueva—Guasaule Annual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual average daily traffic volume: León-Poneloya-Las Peñitas. International Roughness Index: N–I Section R1. International Roughness Index: N–I Section R2. International Roughness Index: Port Sandino (S13). International Roughness Index: Villanueva—Guasaule. International Roughness Index: Somotillo-Cinco Pinos. International Roughness Index: León-Poneloya-Las Peñitas. Kilometers of NI upgraded: R1 and R2 and S13. Kilometers of NI upgraded: Villanueva—Guasaule. Kilometers of S1 road upgraded. Kilometers of S9 road upgraded.

Projects	*Obligated*	*Objectives*	*Cumulative disbursements*	*Measures*
Rural Development Project	$32,875,845	*Increase the value added of farms and enterprises in the region.*	$27,429,435	Number of beneficiaries with business plans. Numbers of *manzanas (1 Manzana = 1.7 hectares),* by sector, harvesting higher-value crops. Number of beneficiaries with business plans prepared with assistance of Rural Business Development Project. Number of beneficiaries implementing Forestry business plans under Improvement of Water Supplies Activity. Number of Manzanas reforested. Number of Manzanas with trees planted.
Program Administration,[1] Due Diligence, Monitoring and Evaluation.	$15,443,702	.....	$14,670,657	
Pending subsequent reports.[2]	.....	.....	$1,487,373	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Georgia Year: 2010 *Quarter 4* *Total Obligation:* $395,300,000 *Entity to which the assistance is provided:* MCA *Georgia* *Total Quarterly Disbursement:* $92,476,526				
Regional Infrastructure Rehabilitation Project.	$315,750,000	*Key Regional Infrastructure Rehabilitated.*	$202,815,531	Household savings from Infrastructure Rehabilitation Activities. Savings in vehicle operating costs (VOC). International roughness index (IRI). Annual average daily traffic (AADT). Travel Time. Road paved/completed. Construction Works completed (Contract 1). Construction Works completed (Contract 2). Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers of roads under design. Signed contracts for road works. Kilometers of roads under works contracts. Site rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all RID subprojects. Population Served by all RID subprojects. RID Subprojects completed. Value of RID Grant Agreements signed. Value of project works and goods contracts Signed. RID subprojects with works initiated.
Regional Enterprise Development Project.	$52,530,800	*Enterprises in Regions Developed.*	$41,856,073	Jobs Created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Jobs created—ADA. Firm income—ADA. Household net income—ADA. Beneficiaries (direct and indirect)—ADA. Grant agreements signed—ADA. Increase in gross revenues of portfolio companies (PC). Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Portfolio companies (PC). Funds disbursed to the portfolio companies.
Program Administration [1, 3], Due Diligence, Monitoring and Evaluation.	$32,350,000	.....	$18,641,284	
Pending subsequent reports.[2]	.....	.....	$2	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
November 2008, MCC and the Georgian government signed a Compact amendment making up to $100 million of additional funds available to the Millennium Challenge Georgia Fund. These funds will be used to complete works in the Roads, Regional Infrastructure Development, and Energy Rehabilitation Projects contemplated by the original Compact. The amendment was ratified by the Georgian parliament and entered into force on January 30, 2009.				

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Vanuatu *Year:* 2010 *Quarter 4* *Total Obligation:* $65,690,000 *Entity to which the assistance is provided*: MCA Vanuatu *Total Quarterly Disbursement:* $7,256,856				
Transportation Infrastructure Project.	$60,162,579	*Facilitate transportation to increase tourism and business development*.	$59,105,315	Traffic volume (average annual daily traffic)—Efate: Ring Road. Traffic Volume (average annual daily traffic)—Santo: East Coast Road. Kilometers of road upgraded—Efate: Ring Road. Kilometers of roads upgraded—Santo: East Coast Road. Percent of contracted roads works disbursed (USD disbursed): Total (Cumulative).
Program Administration,[1] Due Diligence, Monitoring and Evaluation.	$5,527,421	.....	$3,703,400	
Pending subsequent reports.[2]	.....	.....	$19,947	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Armenia *Year:* 2010 *Quarter 4* *Total Obligation:* $235,650,000 *Entity to which the assistance is provided:* MCA Armenia *Total Quarterly Disbursement:* $19,213,705				
Irrigated Agriculture Project (Agriculture and Water).	$152,709,208	*Increase agricultural productivity, Improve and Quality of Irrigation*.	$66,605,940	Training/technical assistance provided for On-Farm Water Management. Training/technical assistance provided for Post-Harvest Processing. Loans Provided. Percent of contracted works disbursed. Value of signed contracts for irrigation works. Number of farmers using better on-farm water management. Number of enterprises using improved techniques. Value of irrigation feasibility and/or detailed design contracts signed. Additional Land irrigated under project. Percent of contracted irrigation feasibility and/or design studies disbursed.
Rural Road Rehabilitation Project.	$67,100,000	*Better access to economic and social infrastructure*.	$7,870,945	Average annual daily traffic on Pilot Roads. International roughness index for Pilot Roads. Road Sections Rehabilitated—Pilot Roads. Pilot Roads: Percent of Works Completed.
Program Administration [1, 3], Due Diligence, Monitoring and Evaluation.	$15,840,792	.....	$19,937,668	
Pending subsequent reports.[2]	.....	.....	$925,337	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Benin *Year:* 2010 *Quarter* 4 *Total Obligation:* $307,298,040 *Entity to which the assistance is provided:* MCA Benin *Total Quarterly Disbursement:* $23,613,176				
Access to Financial Services Project.	$19,650,000	*Expand Access to Financial Services*.	$4,804,163	Volume of credits granted by the Micro-Finance Institutions (MFI). Volume of saving collected by the Micro-Finance Institutions. Average portfolio at risk >90 days of microfinance institutions at the national level. Operational self-sufficiency of MFIs at the national level. Number of institutions receiving grants through the Facility. Number of MFIs *inspected by CSSFD*.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Access to Justice Project ..	$34,270,000	*Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.*	$4,387,059	Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Passage of new legal codes. Average time required for Tribunaux de premiere instance—arbitration centers and courts of first instance (TPI) to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Number of Courthouses completed. Average time required to register a business (*société*). Average time required to register a business (sole proprietorship).
Access to Land Project	$35,645,826	*Strengthen property rights and increase investment in rural and urban land.*	$15,927,586	Total value of investment in targeted urban land parcels. Total value of investment in targeted rural land parcels. Average cost required to convert occupancy permit to land title through systematic process. Share of respondents perceiving land security in the PH–TF or PFR areas. Number of preparatory studies completed. Number of Legal and Regulatory Reforms Adopted. Amount of Equipment Purchased. Number of new land titles obtained by transformation of occupancy permit. Number of land certificates issued within MCA-Benin implementation. Number of PFRs established with MCA Benin implementation. Number of permanent stations installed. Number of stakeholders Trained. Number of communes with new cadastres. Number of operational land market information systems.
Access to Markets Project	$171,059,549	*Improve Access to Markets through Improvements to the Port of Cotonou.*	$57,220,564	Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Port design-build contract awarded. Port crime levels (number of thefts). Average time to clear customs. Port meets—international port security standards (ISPS).
Program Administration,[1] Due Diligence, Monitoring and Evaluation.	$46,672,665	.....	$37,359,740	
Pending subsequent reports.[2]	.....	.....	$283,062	

Projects	*Obligated*	Objective	*Cumulative disbursements*	*Measures*
Country: Ghana *Year:* 2010 *Quarter 3* *Total Obligation:* $547,009,000 *Entity to which the assistance is provided:* MCA Ghana *Total Quarterly Disbursement:* $47,465,045				
Agriculture Project	$214,514,087	*Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.*	$95,228,311	Number of farmers trained in Commercial Agriculture. Number of agribusinesses assisted. Number of preparatory land studies completed. Legal and Regulatory land reforms adopted. Number of landholders reached by public outreach efforts. Number of hectares under production. Number of personnel trained. Number of buildings rehabilitated/constructed. Value of equipment purchased. Feeder Roads International Roughness Index. Feeder Roads Annualized Average Daily Traffic. Value of signed contracts for feasibility and/or design studies of Feeder Roads. Percent of contracted design/feasibility studies completed for Feeder Roads. Value of signed works contracts for Feeder Roads. Percent of contracted Feeder Road works disbursed. Value of loans disbursed to clients from agriculture loan fund. Value of signed contracts for feasibility and/or design studies (irrigation). Percent of contracted (design/feasibility) studies complete (irrigation). Value of signed contracts for irrigation works (irrigation) Rural hectares mapped. Percent of contracted irrigation works disbursed. Percent of people aware of their land rights in Pilot Land Registration Areas. Total number of parcels surveyed in the Pilot Land Registration Areas (PLRAs). Volume of products passing through post-harvest treatment.
Rural Development Project	$73,436,385	*Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.*	$28,739,320	Number of students enrolled in schools affected by Education Facilities Sub-Activity. Number of schools rehabilitated. Number of basic school blocks constructed to Ministry of Education (MOE) construction standards. Distance to collect water. Time to collect water. Incidence of guinea worm. Average number of days lost due to guinea worm. Number of people affected by Water and Sanitation Facilities Sub-Activity. Number of stand-alone boreholes/wells/nonconventional water systems constructed/rehabilitated. Number of small-town water systems designed and due diligence completed for construction. Number of pipe extension projects designed and due diligence completed for construction. Number of agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity.
Transportation Project	$214,054,795	*Reduce the transportation costs affecting agriculture commerce at sub-regional levels.*	$63,198,451	Trunk Roads International roughness index. N1 International Roughness Index. N1 Annualized Average Daily Traffic. N1 Kilometers of road upgraded. Value of signed contracts for feasibility and/or design studies of the N1. Percent of contracted design/feasibility studies completed of the N1. Value of signed contracts for road works N1, Lot 1. Value of signed contracts for road works N1, Lot 2. Trunk Roads Annualized Average Daily Traffic. Trunk Roads Kilometers of roads completed.

Projects	*Obligated*	Objective	*Cumulative disbursements*	*Measures*
				Percent of contracted design/feasibility studies completed of Trunk Roads. Percent of contracted Trunk Road works disbursed. Ferry Activity: Annualized average daily traffic vehicles. Ferry Activity: Annual average daily traffic (passengers). Landing stages rehabilitated. Ferry terminal upgraded. Rehabilitation of Akosombo Floating Dock completed. Rehabilitation of landing stages completed. Percent of contracted road works disbursed: N1, Lot 2. Percent of contracted road works disbursed: N1, Lot 2. Percent of contracted work disbursed: Ferry and floating dock. Percent of contracted work disbursed: Landings and terminals. Value of signed contracts for feasibility and/or design studies of Trunk Roads. Value of signed contracts for Trunk Roads.
Program Administration,[1 3] Due Diligence, Monitoring and Evaluation..	$45,003,733	.....	$47,463,272	
Pending subsequent reports.[2]	.....	.....	$28,614	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: El Salvador *Year:* 2010 *Quarter 4* *Total Obligation:* $460,940,000 *Entity to which the assistance is provided:* MCA El Salvador *Total Quarterly Disbursement:* $42,934,886				
Human Development Project.	$101,753,001	*Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.*	$29,384,863	Employment rate of graduates of middle technical schools. Graduation rates of middle technical schools. Middle technical schools remodeled and equipped. Scholarships granted to students of middle technical schools. Students of non-formal training. Cost of water. Time collecting water. Households benefiting with water solutions built. Potable water and basic sanitation systems with construction contracts signed. Cost of electricity. Households benefiting with a connection to the electricity network. Household benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure.
Productive Development Project.	$71,824,000	*Increase production and employment in the Northern Zone.*	$26,483,228	Number of hectares under production with MCC support. Number of beneficiaries of technical assistance and training—Agriculture. Number of beneficiaries of technical assistance and training—Agribusiness. Value of Agricultural Loans to Farmers/Agribusiness.
Connectivity Project	$246,122,000	*Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.*	$81,051,126	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Kilometers of roads with Construction Initiated.
Productive Development Project.	$71,824,000	.....	$34,480,068	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Program Administration [1] and Control, Monitoring and Evaluation.	$41,240,999	.....	$20,477,971	
Pending Subsequent Report. [2]	.....	.....	$0	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Mali *Year:* 2010 *Quarter 4* *Total Obligation:* $460,811,164 *Entity to which the assistance is provided:* MCA Mali *Total Quarterly Disbursement:* $41,672,745				
Bamako Senou Airport Improvement Project.	$181,254,264	.....	$25,720,644	Employment at airport. Signature of design contract. Average number of weekly flights (arrivals) Passenger traffic (annual average). Percent works complete. Time required for passenger processing at departures and arrivals. Percent works complete. Percent of airport management and maintenance plan implemented. Airport meets Federal Aviation Administration (FAA) and International Civil Aviation Organization (ICAO) security standards. Technical assistance delivered to project.
Alatona Irrigation Project ..	$234,884,675	*Increase the agricultural production and productivity in the Alatona zone of the ON.*	$86,376,257	Main season rice yields. International roughness index (IRI) on the Niono-Goma Coura Route. Average daily vehicle count. Percentage works completed on Niono-Goma Coura road. Number of hectares of land irrigated in the Alatona Canal. Irrigation system efficiency on Alatona Canal during the rainy season and the dry season. Completion rate of work on the construction of the main system (B03). Percentage of contracted irrigation construction works disbursed. Number of titles registered in the land registration office of the Alatona zone. Number of market gardens allocated in Alatona zones (for PAPs) (market garden parcels allotted to PAP women). Decree transferring legal control of the project impact area is passed. Contractor implementing the ''Mapping of Agricultural and Communal Land Parcels'' contract is mobilized. Net school enrollment rate (in Alatona zone). Percent of Alatona population with access to drinking water. Number of schools available in Alatona. Number of health centers available in Alatona. Number of affected people who have been compensate. Resettlement Census verified. Adoption of Rate of Extension Techniques. Area planted with rice during the rainy season. Area planted with shallots during dry season. Number of farmers trained. Water management system design and capacity building strategy implemented. Amount of credit extended to Alatona farmers. Number of farmers accessing grant assistance for first loan from financial institutions. Financial institution partners identified (report on assessment of the financial institution in the Office du Niger—Office of Niger zone (ON zonel). Loan Portfolio quality of Alatona MFIs: portfolio at risk.
Industrial Park Project	$2,643,432	*Terminated*	$2,637,472	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Program Administration[1] and Control, Monitoring and Evaluation.	$42,028,793	.....	$20,385,241	
Pending Subsequent Report.[2]	.....	.....	$18,398	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mongolia *Year: 2010 Quarter 4 Total Obligation:* $284,911,362 *Entity to which the assistance is provided:* MCA Mongolia *Total Quarterly Disbursement:* $14,768,683				
Property Rights Project	$27,201,061	*Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.*	$2,825,022	Number of studies completed. Legal and regulatory reforms adopted. Number of landholders reached by public outreach efforts. Training to Leaseholders—Intensive and Semi-Intensive Farming. Number of Buildings rehabilitated/constructed. Value of equipment purchased. Rural hectares Mapped. Urban Parcels Mapped. Leaseholds Awarded. Hashaa Plots Directly Registered by the Property Rights Project.
Vocational Education Project.	$47,355,638	*Increase employment and income among unemployed and underemployed Mongolians.*	$2,976,911	Rate of employment of TVET Graduates. Students completing newly designed long-term programs. Percent of active teachers receiving certification training. Technical and vocational education and training (TVET) legislation passed.
Health Project	$38,974,817	*Increase the adoption of behaviors that reduce non-communicable diseases (NCDIs) among target populations and improved medical treatment and control of NCDIs.*	$5,575,398	Diabetes and hypertension controlled. Percentage of cancer cases diagnosed in early stages. Road and traffic safety activity finalized and key interventions developed.
Roads Project	$79,750,000	*TBD*	$4,570,157	*TBD.*
Energy and Environmental Project.	$46,966,205	*TBD*	$271,173	*TBD.*
Rail Project	$369,560	*Terminated*	$369,560	*Terminated.*
Program Administration [1] and Control, Monitoring and Evaluation.	$44,294,082	.....	$13,273,879	
Pending subsequent reports.[2]	.....	.....	$134,701	

In late 2009, the MCC's Board of Directors approved the allocation of a portion of the funds originally designated for the rail project to the expansion of the health, vocational education and property right projects from the rail project, and the remaining portion to the addition of a road project.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mozambique *Year: 2010 Quarter 4 Total Obligation:* $506,924,053 *Entity to which the assistance is provided:* MCA Mozambique *Total Quarterly Disbursement:* $7,529,614				
Water Supply and Sanitation Project.	$203,585,393	*Increase access to reliable and quality water and sanitation facilities.*	$5,635,522	Time to get to non-private water source. Percent of urban population with improved water sources. Percent of urban population with improved sanitation facilities. Percent of rural population with access to improved water sources. Number of private household water connections in urban areas. Number of Rural water points constructed. Number of standpipes in urban areas. Final detailed design for 5 towns submitted. Final detailed design for 3 cities submitted.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Road Rehabilitation Project	$176,307,480	*Increase access to productive resources and markets.*	$3,144,038	Kilometers of road rehabilitated. Percent of Namialo—Rio Lúrio Road—Metoro feasibility, design, and supervision contract disbursed. Percent of Rio Ligonha-Nampula feasibility, design, and supervision contract disbursed. Percent of Chimuara-Nicoadala feasibility, design, and supervision contract disbursed. Percent of Namialo—Rio Lúrio Road construction contract disbursed. Percent of Rio Lúrio—Metoro Road construction contract disbursed. Percent of Rio Ligonha—Nampula Road construction contract disbursed. Percent of Chimuara-Nicoadala Road construction contract disbursed. Average annual daily traffic volume. Average annual daily traffic volume. Average annual daily traffic volume. Average annual daily traffic volume. Change in International Roughness Index (IRI)—Namialo—Rio Lurio Road. Change in International Roughness Index (IRI)—on Rio Ligonha-Nampula Road. Change in International Roughness Index (IRI)—on Rio Lurio-Metoro Road. Change in International Roughness Index (IRI)—on Chimuara-Nicoadala Road.
Land Tenure Project	$39,068,307	*Establish efficient, secure land access for households and investors.*	$5,977,098	Total number of officials and residents reached with land strategy and policy awareness and outreach messages. Time to get land usage rights (DUAT), urban. Time to get land usage rights (DUAT), rural. Number of buildings rehabilitated or built. Total value of procured equipment and materials. Number of people trained. Rural hectares mapped in Site Specific Activity. Rural hectares mapped in Community Land Fund Initiative. Urban parcels mapped. Rural hectares formalized through Site Specific Activity. Rural hectares formalized through Community Land Fund Initiative. Urban parcels formalized. Number of communities delimited. Number of households having land formalized, rural. Number of households having land formalized, urban.
Farmer Income Support Project.	$18,400,117	*Improve coconut productivity and diversification into cash crop.*	$4,219,775	Number of diseased or dead palm trees cleared. Number of coconut seedlings planted. Hectares under production. Number of farmers trained in pest and disease control. Number of farmers trained in crop diversification technologies. Income from coconuts and coconut products (estates). Income from coconuts and coconuts products (households).
Program Administration[1] and Control, Monitoring and Evaluation.	$69,562,756	.....	$15,929,371	
Pending Subsequent Report.[2]	.....	.....	$224,469	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Lesotho *Year:* 2010 *Quarter 4* *Total Obligation:* $362,551,000 *Entity to which the assistance is provided:* MCA Lesotho *Total Quarterly Disbursement:* $8,824,926				
Water Project	$164,027,999	*Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.*	$11,510,014	School days lost due to water borne diseases. Diarrhea notification at health centers. Time saved due to access to water source. Rural household (HH) provided with access to improved water supply. Rural HH provided with access to improved ventilated latrines. Rural population with knowledge of good hygiene principles. Urban HH with access to potable water supply. Number of enterprises connected to water network. Households connected to improved water network. Cubic meters of treated water from metolong dam delivered through a conveyance system to Water and Sewerage Authority (WASA). Hydrological flows variability. Reclaimed area.
Health Project	$122,398,000	*Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.*	$8,975,636	People with HIV still alive 12 months after initiation of treatment. TB notification (per 100,000 pop.). Percentage of PLWA receiving ARV treatment (by age & sex). Deliveries conducted in the health centers. Immunization coverage rate.
Private Sector Development Project.	$36,470,318	*Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.*	$5,068,026	Average time (days) required to enforce a contract. Value of commercial cases. Cases referred to ADR that are successfully completed. Portfolio of loans. Loan processing time. Performing loans. Electronic payments—salaries. Electronic payments—pensions. Debit/smart cards issued. Mortgage bonds registered. Value of registered mortgage bonds. Clearing time—Maseru. Time to complete transfer of land rights. Land transactions recorded. Land parcels regularized and registered. People trained on gender equality and economic rights. ID cards issued. Monetary cost of a lease transaction.
Program Administration [1] and Control, Monitoring and Evaluation.	$39,654,682	.....	$17,965,233	
Pending Subsequent Report.[2]	.....	.....	$830,982	
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Morocco *Year:* 2010 *Quarter 4* *Total Obligation:* $697,500,000 *Entity to which the assistance is provided:* MCA Morocco *Total Quarterly Disbursement:* $33,030,895				
Fruit Tree Productivity Project.	$300,896,445	*Reduce volatility of agricultural production and increase volume of fruit agricultural production.*	$28,776,035	Number of farmers trained. Number of agribusinesses assisted. Number of hectares under production. Value of agricultural production.
Small Scale Fisheries Project.	$116,168,027	*Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.*	$3,750,631	Landing sites and ports rehabilitated. Mobile fish vendors using new equipments. Fishing boats using new landing sites. Average price of fish at auction markets. Average price of fish at wholesale. Average price of fish at ports.
Artisan and Fez Medina Project.	$111,873,858	Increase value added to tourism and artisan sectors.	$679,067	Average revenue of SME pottery workshops. Construction and rehabilitation of Fez Medina Sites. Tourist receipts in Fez. Training of potters.

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Enterprise Support Project	$33,850,000	*Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.*	$4,434,211	Number of enterprises in pilot project receiving coaching. Value added per enterprise. Survival rate after two years.
Financial Services Project	$46,200,000	*TBD*	$19,193,986	*TBD.*
Program Administration [1] and Control, Monitoring and Evaluation.	$88,511,670	.....	$35,553,639	
Pending Subsequent Report.[2]	.....	.....	$6,448,551	
Projects	*Obligated*	*Objectives*	*Cumulative disbursements*	*Measures*
Country: Tanzania *Year:* 2010 *Quarter 4* *Total obligation:* $698,136,000 *Entity to which the assistance is provided:* MCA Tanzania *Total Quarterly Disbursement:* $33,634,843				
Energy Sector Project	$206,042,428	*Increase value added to businesses.*	$15,590,343	New power customers: Kigoma. New power customers: Morogoro. New power customers: Tanga. New power customers: Mbeya. New power customers: Iringa. New power customers: Dodoma. New power customers: Mwanza. New power customers: Zanzibar. Energy generation: Kigoma. Transmission capacity: Kigoma. Transmission capacity: Morogoro. Transmission capacity: Tanga. Transmission capacity: Mbeya. Transmission capacity: Iringa. Transmission capacity: Dodoma. Transmission capacity: Mwanza. Transmission capacity: Zanzibar. Percentage disbursed for design and supervision contract Consulting Engineer (CE) year 1 budgeted: Distribution Rehabilitation and extension activity. Percentage disbursed for design and supervision contract Consulting Engineer (CE) year 1 budgeted; Zanzibar Interconnector activity. Percentage disbursed for design and supervision contract Consulting Engineer (CE) year 1 budgeted; Malagarasi hydropower and Kigoma distribution activity.
Transport Sector Project ...	$368,847,428	*Increase cash crop revenue and aggregate visitor spending.*	$35,775,976	International roughness index: Tunduma Sumbawanga. International roughness index: Tanga Horohoro. International roughness index: Namtumbo Songea. International roughness index: Peramiho Mbinga. Annual average daily traffic: Tunduma Sumbawanga. Annual average daily traffic: Tanga Horohoro. Annual average daily traffic: Namtumbo Songea. Annual average daily traffic: Peramiho Mbinga. Kilometers upgraded/completed: Tunduma Sumbawanga. Kilometers upgraded/completed: Tanga Horohoro. Kilometers upgraded/completed: Namtumbo Songea. Kilometers upgraded/completed: Peramiho Mbinga. Percent disbursed on construction works: Tunduma Sumbawanga Percent disbursed on construction works: Tanga Horohoro. Percent disbursed on construction works: Namtumbo Songea. Percent disbursed on construction works: Peramiho Mbinga.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Percent disbursed for feasibility and/or design studies: Tunduma Sumbawanga. Percent disbursed for feasibility and/or design studies: Tanga Horohoro. Percent disbursed for feasibility and/or design studies: Namtumbo Songea. Percent disbursed for feasibility and/or design studies: Peramiho Mbinga. International roughness index: Pemba. Average annual daily traffic: Pemba. Kilometers upgraded/completed: Pemba. Percent disbursed on construction works: Pemba. Signed contracts for construction works (Zanzibar Rural Roads). Percent disbursed on signed contracts for feasibility and/or design studies: Pemba. Passenger arrivals: Mafia Island. Percentage of upgrade complete: Mafia Island. Percent disbursed on construction works: Mafia Island.
Water Sector Project	$65,692,143	*Increase investment in human and physical capital and to reduce the prevalence of water-related disease.*	$3,003,213	Number of households using improved source for drinking water (Dar es Salaam). Number of households using improved source for drinking water (Morogoro). Number of businesses using improved water source (Dar es Salaam). Number of businesses using improved water source (Morogoro). Volume of water produced (Lower Ruvu). Volume of water produced (Morogoro). Percent disbursed on Feasibility Design Update contract Lower Ruvu Plant Expansion.
Program Administration [1] and Control, Monitoring and Evaluation.	$57,554,001	.....	$22,498,946	
Pending Subsequent Report.[2]	.....	.....	$206,195	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Burkina Faso *Year: 2010* *Quarter 4* *Total Obligation:* $478,943,569				
Entity to which the assistance is provided: MCA Burkina Faso *Total Quarterly Disbursement:* $10,124,580				
Roads Project	$194,130,681	*Enhance access to markets through investments in the road network.*	$1,724,994	*To Be Determined (TBD).*
Rural Land Governance Project.	$59,934,615	*Increase investment in land and rural productivity through improved land tenure security and land management.*	$4,249,902	*TBD.*
Agriculture Development Project.	$141,910,059	*Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.*	$4,164,147	*TBD.*
Bright II Schools Project ...	$26,829,669	*Increase primary school completion rates.*	$26,95,776	*TBD.*
Program Administration [1] and Control, Monitoring and Evaluation.	$56,138,545	.....	$16,887,315	
Pending Subsequent Report.[2]	.....	.....	−$65,145	

Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Namibia *Year: 2010 Quarter 4* *Total Obligation:* $304,477,819 *Entity to which the assistance is provided:* MCA Namibia *Total Quarterly Disbursement:* $6,739,123				
Education Project	$144,976,559	*Improve the education sector's effectiveness, efficiency and quality.*	$7,526,081	*TBD.*
Tourism Project	$66,959,292	*Increase incomes and create employment opportunities by improving the marketing, management and infrastructure of Etosha National Park.*	$3,521,203	*TBD.*
Agriculture Project	$47,550,008	*Sustainably improve the economic performance and profitability of the livestock sector and increase the volume of the indigenous natural products for export.*	$2,784,242	*TBD.*
Program Administration [1] and Control, Monitoring and Evaluation.	$44,991,960	.....	$7,155,706	
Pending Subsequent Report.[2]	.....	.....	$2,023,825	
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Moldova *Year: 2010 Quarter 4* *Total Obligation:* $262,000,000 *Entity to which the assistance is provided:* MCA Moldova *Total Quarterly Disbursement:* $150,215				
Road Rehabilitation Project	$132,840,000	.....	$0	*To Be Determined* (TBD).
Transition to High Value Agriculture Project.	$101,773,401	.....	$0	*TBD.*
Program Administration [1] and Monitoring and Evaluation.[2]	$27,386,599	.....	$150,215	*TBD.*
Projects	*Obligated*	*Objective*	*Cumulative disbursements*	*Measures*
Country: Senegal *Year:* 2010 *Quarter 4* *Total Obligation:* $540,000,000 *Entity to which the assistance is provided:* MCA Moldova *Total Quarterly Disbursement:* $853.650				
Road Rehabilitation Project	$324,062,499	.....	$0	*To Be Determined (TBD).*
Transition to High Value Agriculture Project.	$170,008,860	.....	$0	*TBD.*
Program Administration [1] and Monitoring and Evaluation.	$45,928,641	.....	$829,986	*TBD.*
Pending Subsequent Report. [2]	.....	.....	$123,829	

[1] Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

[2] These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s)

[3] FY2010 overstatement of program admin disbursements for selected countries is related to expense accruals. The accruals will be reversed in 2011 and applied to various projects and activities.

619(b) Transfer or Allocation of Funds

U.S. Agency to which Funds were Transferred or Allocated	*Amount*	*Description of program or project*
USAID	$28,827,779	Threshold Program.

Dated: December 22, 2010.

T. Charles Cooper,
Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. 2010–32725 Filed 12–28–10; 8:45 am]

BILLING CODE 9211–03–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0318]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 13, 2010.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 26, "Fitness for Duty Programs."

3. *Current OMB approval number:* 3150–0146.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Annually and on occasion.

6. *Who will be required or asked to report:* Nuclear power reactor licensees licensed under 10 CFR part 50 or 52 (except those who have permanently ceased operations and have verified that fuel has been permanently removed from the reactor); all holders of nuclear power plant construction permits and early site permits with a limited work authorization and applicants for nuclear power plant construction permits that have a limited work authorization under the provisions of 10 CFR part 50; all holders of a combined license for a nuclear power plant issued under 10 CFR part 52 and applicants for a combined license that have a limited work authorization; all licensees, who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) under the provisions of 10 CFR part 70; all holders of a certificate of compliance of an approved compliance plan issued under 10 CFR part 76, if the holder engages in activities involving formula quantities of SSNM; and all contractor/vendors (C/V) who implement fitness-for-duty (FFD) programs or program elements to the extent that the licensees and other entities listed in this paragraph rely on those C/V FFD programs or program elements to comply with 10 CFR part 26.

7. *An estimate of the number of annual responses:* 521,919 (120 total annual reporting responses + 42 recordkeepers + 521,757 third-party responses).

8. *The estimated number of annual respondents:* 89,510 (31 FFD program responses + 1 Subpart K construction FFD program respondent + 10 HHS-certified laboratories + 89,468 third-party respondents).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 666,824 (6,615 reporting + 358,352 recordkeeping + 301,857 third party disclosure).

10. *Abstract:* NRC regulations in 10 CFR part 26 prescribe requirements to establish, implement, and maintain fitness-for-duty programs at affected licensees and other entities. The objectives of these requirements are to provide reasonable assurance that persons subject to the rule are trustworthy, reliable, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way could adversely affect their ability to safely and competently perform their duties. These requirements also provide reasonable assurance that the effects of fatigue and degraded alertness on individuals' abilities to safely and competently perform their duties are managed commensurate with maintaining public health and safety. The information collections required by part 26 are necessary to properly manage FFD programs and to enable effective and efficient regulatory oversight of affected licensees other entities. These licensees and other entities must perform certain tasks, maintain records, and submit reports to comply with part 26 drug and alcohol provisions and fatigue management requirements. These records and reports are necessary to enable regulatory inspection and evaluation of a licensee's or entity's compliance with NRC regulations, its FFD performance, and of any significant FFD-related event to help maintain public health and safety, promote the common defense and security, and protect the environment.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 28, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0146), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, December 21, 2010.

For the Nuclear Regulatory Commission.

Fajr Majeed,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–32825 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2008–0618]

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Notice of Issuance of Renewed Facility, Operating License No. DPR–49 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has issued renewed facility operating license No. DPR–49 to NextEra Energy Duane Arnold, LLC (licensee), the operator of the Duane Arnold Energy Center (DAEC). Renewed facility operating license No. DPR–49 authorizes operation of DAEC by the licensee at reactor core power levels not in excess of 1912 megawatts thermal in accordance with the provisions of the DAEC renewed license and its technical specifications.

The notice also serves as the record of decision for the renewal of facility

operating license No. DPR–49, consistent with Title 10 of the Code of Federal Regulations Section 51.103 (10 CFR 51.103). As discussed in the final Supplemental Environmental Impact Statement (FSEIS) for DAEC, dated October 2010, the Commission has considered a range of reasonable alternatives that included generation from coal fired generation, natural gas combined-cycle generation, combined alternative, and the no-action alternative. The factors considered in the record of decision can be found in the supplemental environmental impact statement (SEIS) for DAEC.

DAEC is a boiling-water reactor located in Palo, Iowa. The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR chapter 1, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on February 17, 2009 (73 FR 67895).

For further details with respect to this action, see: (1) FPL Duane Arnold, LLC's license renewal application for Duane Arnold Energy Center dated September 30, 2008, as supplemented by letters dated through August 18, 2010; (2) the Commission's safety evaluation report (NUREG–1955), published in November 2010; (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 42), for the Duane Arnold Energy Center, published in October 2010. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of renewed facility operating license No. DPR–49, may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the Duane Arnold Energy Center safety evaluation report (NUREG–1955) and the final environmental impact statement (NUREG–1437, Supplement 42) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), 703–605–6000, or *Attention:* Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 16th day of December, 2010.

For The Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–32830 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on January 12, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 12, 2011—1:30 p.m. Until 5:30 p.m.

The Subcommittee will review the status of the Groundwater Protection Task Force efforts including the SECY paper being developed. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: December 21, 2010.

Ilka Berrios,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–32810 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 12, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, January 12, 2011—12 p.m. Until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related

matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or E-mail: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: December 15, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–32817 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on January 11, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 11, 2011—1 p.m. until 5 p.m.

The Subcommittee will review a SECY paper comparing Integrated Safety Assessments (ISAs) for fuel cycle facilities and Probabilistic Risk Assessments (PRAs) for reactors. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Benson (Telephone 301–415–6396 or E-mail: *Michael.Benson@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: December 21, 2010.

Ilka Berrios,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–32822 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on January 12, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 12, 2011–1:30 p.m. until 5 p.m.

The Subcommittee will review the license renewal application for Crystal River and the associated draft Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with the NRC staff, Florida Power Corporation, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or E-mail: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this

timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: December 15, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–32820 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR); Notice of Meeting

The ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR) will hold a meeting on January 12, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 12, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review Chapter 2, Sections 2.0 to 3.0 of the Calvert Cliffs Reference Combined License (RCOL) Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with representatives of UniStar, the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: December 21, 2010.

Ilka Berrios,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–32814 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of December 27, 2010, January 3, 10, 17, 24, 31, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 27, 2010

There are no meetings scheduled for the week of December 27, 2010.

Week of January 3, 2011—Tentative

There are no meetings scheduled for the week of January 3, 2011.

Week of January 10, 2011—Tentative

Tuesday, January 11, 2011

9:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of January 17, 2011—Tentative

There are no meetings scheduled for the week of January 17, 2011.

Week of January 24, 2011—Tentative

Monday, January 24, 2011

1 p.m. Briefing on Safety Culture Policy Statement (Public Meeting.) (*Contact:* Diane Sieracki, 301–415–3297).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of January 31, 2011—Tentative

Tuesday, February 1, 2011

9 a.m. Briefing on Digital Instrumentation and Controls (Public Meeting). (*Contact:* Steven Arndt, 301–415–6502.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*.

Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: December 23, 2010.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2010–32921 Filed 12–27–10; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0394]

Service Contracts Inventory

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing for public information its Inventory of Contracts for Services for Fiscal Year (FY) 2010. The inventory includes service contract actions over $25,000 that were awarded in FY 2010.

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

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Inventory of Contracts for Services for FY 2010 can be accessed under ADAMS accession number ML103481209.

The inventory was published on the NRC Web site at the following location: *http://www.nrc.gov/about-nrc/contracting.html.*

FOR FURTHER INFORMATION CONTACT: Lori Konovitz, Office of Administration, Mail Stop TWB–01–B10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Telephone:* 301–492–3627, or *e-mail: lori.konovitz@nrc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, the NRC is providing for public information its Inventory of Contracts for Services for FY 2010. The inventory includes service contract actions over $25,000 that were awarded in FY 2010. The inventory contains the following data:

1. A description of the services purchased;
2. The NRC office responsible for administering the contract;
3. The total dollar amount obligated for the services under the contract, and the funding source for the contract;
4. The contract type and date of the award;
5. The name of the contractor and place of performance;
6. Whether the contract is a personal services contract; and
7. Whether the contract was awarded on a non-competitive basis.

The NRC will analyze the data in the inventory for the purpose of determining if its contract labor is being used in an effective and appropriate manner and if the mix of Federal employees and contractors in the agency is effectively balanced. The NRC developed the inventory by pulling data from the Federal Procurement Data System—Next Generation. The inventory does not include contractor proprietary or sensitive information.

Dated at Rockville, Maryland, December 20, 2010.

For the Nuclear Regulatory Commission.

Virginia A. Huth,

Acting Director, Division of Contracts, Office of Administration.

[FR Doc. 2010–32828 Filed 12–28–10; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Purchase of Irrevocable Commitments Before Standard Termination

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: PBGC is not taking further regulatory action or providing specific guidance on purchase of irrevocable commitments before standard termination at this time.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, or Grace Kraemer, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024).

SUPPLEMENTARY INFORMATION: On November 23, 2009 (at 74 FR 61074), the Pension Benefit Guaranty Corporation (PBGC) published a request for public comment on purchase of irrevocable commitments before standard termination and in response received 10 comments. PBGC thanks the commenters for their thoughtful and informative responses. PBGC has decided not to take further regulatory action or provide specific guidance at this time. PBGC will continue monitoring industry practices to determine whether further regulatory action or specific guidance is needed in the future. PBGC will also continue to audit all plans that make a final distribution of plan assets before or without filing a standard termination notice and take enforcement action where appropriate.

Issued in Washington, DC this 22nd day of December, 2010.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–32827 Filed 12–28–10; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Information Collection 3206–NEW; Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S)

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: Federal Investigative Services (FIS), U.S. Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–NEW, for Questionnaire for Public Trust Positions, Standard Form 85P (SF 85P)

and Supplemental Questionnaire for Selected Positions, Standard Form SF 85P–S (SF 85P–S). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

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 submissions of responses.

DATES: Comments are encouraged and will be accepted until February 28, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, *Attention:* Lisa Loss or sent via electronic mail to *FISFormsComments@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20503, *Attention:* Lisa Loss or sent via electronic mail to *FISFormsComments@opm.gov*.

SUPPLEMENTARY INFORMATION: Questionnaire for Public Trust Positions, SF 85P and Supplemental Questionnaire for Selected Positions, SF 85P–S and Parallel, electronic version of the SF 85P and SF 85P–S, including accompanying releases, housed in a system named e-QIP (Electronic Questionnaires for Investigative Processing), are information collections completed by applicants for, or incumbents of, Federal Civilian Government positions, or positions in private entities performing work for the Government under contract. The collections are used as the basis of information for background investigations to establish that such persons are:

- Suitable for employment or retention in Federal employment in a public trust position or fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position;
- Fit based on character and conduct for contract employment on behalf of the Federal Government, or eligible for physical and logical access to federally controlled facilities or information systems as a contract employee, when the duties to be performed are equivalent to the duties performed by an employee in a public trust position.

The SF 85P and SF 85P–S are completed by civilian employees of the Federal Government, and individuals not employed with the Federal Government, Non-Federal employees, including Federal contractors and individuals otherwise not directly employed by the Federal Government. For applicants, the SF 85P and SF 85P–S are to be used only after a conditional offer of employment has been made. The SF 85P–S is supplemental to the SF 85P. It is estimated that 112,894 non-Federal individuals, will complete the SF 85P annually. The SF 85P takes approximately 75 minutes to complete. The estimated annual burden is 141,118 hours. It is estimated that 11,717 non-Federal individuals will complete the SF 85P–S annually. The SF 85P–S takes approximately 10 minutes to complete. The estimated annual burden is 1,953 hours. e-QIP (Electronic Questionnaires for Investigations Processing) is a web-based system application that currently houses electronic versions of the SF 85P and SF 85P–S. This internet data collection tool provides faster processing time and immediate data validation to ensure accuracy of the respondent's personal information. The e-Government initiative mandates that agencies utilize e-QIP for all investigations and reinvestigations. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to a particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. As such, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history. Additionally, once entered, a respondent's complete and certified investigative data remains secured in the e-QIP system until the next time the respondent is sponsored by an agency to complete a new investigative form. Upon initiation, the respondent's previously entered data (except 'yes/no' questions) will populate a new investigative request and the respondent will be allowed to update their information and certify the data. In this instance, time to complete the form is reduced significantly.

OPM intends to establish consistency and alignment of format and text, as appropriate, regarding the Standard Form investigative questionnaires. OPM proposes changes to the SF 85P. The collection will include requests for email addresses and mobile phone numbers in order to facilitate the investigation. Section 8 collects U.S. Passport Information which was previously collected under the Citizenship Section. Section 9 now collects Citizenship. Additional information is collected that will assist in verifying citizenship of respondents born outside of the U.S. Branching questions inserted after each response tailor the elicitation of information to the respondent's personal history. The collection in Section 10, Dual/Multiple Citizenship & Foreign Passport Information, has been expanded to collect more detailed information regarding other citizenship claims and the use of foreign passport(s). Section 9, Where You Have Lived was amended to Section 11. Respondents will not be required to list temporary locations of less than 90 days, whereas the previous version of the form allowed this exception only for temporary military duty locations under 90 days. Residence verifier information will be collected for a period of '3 years' vice '5 years.' Section 10, Where You Went to School, was amended to Section 12. Section 11, Your Employment Activities was amended to include, Section 13a, Employment Activities-Employment & Unemployment Record. Non-government employment (excluding self-employment) was added to the employment types for clarity. Section 13b, Employment Activities-Former Federal Service was added to collect

information regarding former federal employment. Section 12 became Section 13c, Employment Record. The collection was expanded to require reporting of adverse incidents in the workplace, specifically written warnings, official reprimands, suspensions, and discipline for misconduct in the workplace. Section 14 became Selective Service Record. The Selective Service Web site, *http://www.sss.gov,* was added to assist the respondent in obtaining their Selective Service number. Section 15 became Military History. The collection was expanded to require military discharge type and details of any courts martial within the last 7 years. The collection regarding foreign military service was expanded to collect information regarding service in a foreign intelligence, diplomatic, security forces, militia, other defense force, or government agency, and to collect additional details of such service. In Section 17, Marital Status, the collection was expanded to collect cohabitant and former spouse information. Section 18 became Relatives and the collection was expanded to collect aliases of named relatives. Section 19 became Foreign Countries You Have Visited. Branching questions were added to collect more specific details pertinent to incidents of being questioned, searched or detained by local customs or security service officials, involvement in any encounter with the police or in contact with any person known or suspected of being involved or associated with foreign intelligence, terrorist, security, or military organizations. In Section 20, Police Record, branching questions were added to inquire about the disposition of criminal proceedings, and to inquire about offenses related to firearms, explosives, alcohol and drugs. Questions were added to the section in order to identify respondents who may be impacted by the restrictions cited in the Lautenberg Amendment. The exception to omit traffic fines of less than $150 was changed to $300 (unless related to alcohol or drugs) to account for the nature of fine increases since the 1995 version of the form. Section 21 became Illegal Use of Drugs and Drug Activity. The collection was expanded to collect information regarding illegal use of drugs and drug involvement during the last 7 years, and branching questions were added to inquire about drug involvement while employed as a law enforcement officer, prosecutor or courtroom official, misuse of prescription drugs and involvement in counseling or treatment as a result of illegal use of drugs. Section 22, Use of Alcohol, was added, to collect information regarding negative impacts of alcohol on the respondent's work performance and professional relationships during the last 7 years, and to identify attempts at rehabilitation through counseling or treatment. Section 23, Investigations and Clearance Record, was expanded to collect additional information necessary for investigation to obtain relevant prior records and to elicit explanations regarding prior security clearance adverse actions of debarments from federal employment. In Section 24, Financial Record, branching questions were added to elicit specific detailed information pertaining to each financial area instead of an open text field for respondents to provide explanation. A question was added regarding involvement with a credit counseling service to capture mitigating information from respondents who seek assistance to resolve an inability to meet financial obligations. Section 25, Use of Information Technology Systems, was added to elicit information pertinent to respondent's illegal or unauthorized access or attempt to access any information technology system. Section 26, Involvement in Non-Criminal Court Actions, was added to collect information when the respondent, in the last seven years, has been a defendant in any public record civil court action alleging fraud or intentional tortious conduct. Section 27, Association Record, was added to collect detailed information pertinent to a respondent's involvement in terrorist organizations, association with persons involved in activities to further terrorism and/or to overthrown the U.S. Government by force or violence. Verbiage was added to the Authorization for Release of Information authorizing the Social Security Administration (SSA) to verify respondent's Social Security Number and provide the results to OPM. The Authorization for Release of Medical Information was updated to acknowledge the Health Insurance Portability and Accountability Act (HIPPA) and to provide information regarding the circumstances when its use is required. The Fair Credit Reporting Disclosure and Authorization Form was made part of the proposed SF 85P as required under previous OMB Terms of Clearance in order to standardize the release by which collection of credit bureau reports is authorized.

OPM also proposes changes to the SF 85P–S. Questions regarding the illegal use of drugs in the last 7 years will be removed as this information will be collected in the primary SF 85P questionnaire; however, the question regarding illegal use of drugs ever while in a public safety position or position of trust will remain. Questions regarding alcohol treatment or counseling in the last 7 years will be removed as this information will be collected in the primary SF 85P questionnaire.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–32871 Filed 12–28–10; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–3126/December 22, 2010]

Order Approving Investment Adviser Registration Depository Filing Fees

Section 204(b) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.[1] Commission staff, representatives of the North American Securities Administrators Association, Inc. ("NASAA"),[2] and representatives of the Financial Industry Regulatory Authority ("FINRA"), the IARD system operator, periodically hold discussions on IARD system finances.

FINRA wrote to Commission staff in November recommending revised annual and initial IARD filing fees to commence on January 1, 2011.[3] The recommended fee levels would increase the fee for advisers with assets under management of $100 million or higher, but would not change the fee levels for advisers with assets under management under $100 million.[4] The recommended annual filing fees due beginning January 1, 2011 are $40 for advisers with assets

[1] 15 U.S.C. 80b–4(b).

[2] The IARD system is used by both advisers registering or registered with the SEC and advisers registered or registering with one or more state securities authorities. NASAA represents the state securities administrators in setting IARD filing fees for state-registered advisers.

[3] FINRA letter dated November 12, 2010 available at *http://www.sec.gov/rules/other/2010/finraletter111210-iardfees.pdf.*

[4] The revised fee level for advisers in the largest category would newly include advisers that report assets under management of exactly $100 million (not just over $100 million). We are making this revision to track the new mid-sized adviser category for advisers reporting assets under management of $25 million up to, but not including, $100 million. *See* section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)).

under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $225 for advisers with assets under management of $100 million or higher. The recommended initial IARD filing fees due beginning January 1, 2011 are $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $225 for advisers with assets under management of $100 million or higher. The revised filing fees would apply to all annual updating amendments filed by SEC-registered advisers beginning January 1, 2011 and to all initial applications for registration filed by advisers applying for SEC registration beginning January 1, 2011.

On December 2, 2010 we issued a notice indicating our intent to charge revised fees IARD filing fees for advisers registering or registered with the Commission. The notice gave interested persons an opportunity to request a hearing and stated that an order instituting revised IARD filing fees would be issued unless a hearing was ordered. No request for a hearing has been filed, and no hearing has been ordered.

It is therefore ordered, pursuant to Sections 204(b) and 206(A) of the Investment Advisers Act of 1940, that:

For annual updating amendments to Form ADV filed on or after January 1, 2011, the filing fee due from SEC-registered advisers is $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $225 for advisers with assets under management of $100 million or higher.

For initial applications to register as an investment adviser with the SEC filed on or after January 1, 2011, the filing fee due from SEC-registered advisers is $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $225 for advisers with assets under management of $100 million or higher.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–32715 Filed 12–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63597; File No. SR–BX–2010–059]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Create a Listing Market on the Exchange

December 22, 2010.

On August 20, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a listing market on the Exchange. The proposed rule change was published for comment in the **Federal Register** on September 8, 2010.[3] The Commission received three comments on the proposal.[4] The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 7, 2010.[5] On December 6, 2010, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. On December 7, 2010, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] Although the Order Instituting Proceedings included a summary of Amendment No. 1, the Commission is publishing the full text of Amendment No. 1 for the benefit of interested persons who wish to comment on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 ("Notice").

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Tom A. Alberg, Managing Director and Founder, Madrona Venture Group, dated December 1, 2010; Michael R. Trocchio, Bingham McCutchen LLP, dated October 3, 2010; and William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated September 28, 2010. For a summary of these comments, *see* Securities Exchange Act Release No. 63448 (December 7, 2010), 75 FR 77036 (December 10, 2010) ("Order Instituting Proceedings").

[5] *See* Securities Exchange Act Release No. 63105 (October 14, 2010), 75 FR 64772 (October 20, 2010).

[6] *See* Order Instituting Proceedings, *supra* note 4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Amendment No. 1 to the Proposed Rule Change

The Exchange proposes to create a listing market, which will be called "BX" [sic].[7] Following Commission approval, the Exchange will announce the operational date of the new market in an Equity Trader Alert and press release. The proposed rules will become effective on the operational date.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX'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, 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

In connection with the acquisition of the former Boston Stock Exchange by The NASDAQ OMX Group, Inc., the Exchange discontinued its listing marketplace and delisted all securities previously listed on the Exchange.[8] Since January 2009, the Exchange has operated as a trading venue only, allowing market participants to trade securities listed on other national securities exchanges pursuant to unlisted trading privileges.

The Exchange is proposing to begin listing securities again, through the creation of a new listing market, to be called "The BX Venture Market." The BX Venture Market will have minimal quantitative listing standards, but have qualitative requirements, which are, in

[7] The Commission notes that BX has proposed, in this Amendment No. 1, to name the new listing market as "The BX Venture Market," rather than "BX."

[8] *See* Securities Exchange Act Release No. 59265 (January 16, 2009), 74 FR 4790 (January 27, 2009) (approving SR–BSE–2008–36 relating to the delisting of all securities from the Exchange in connection with the Exchange's discontinuation of trading).

many respects, similar to those required for listing on The NASDAQ Stock Market ("Nasdaq") and other national securities exchanges.[9] The Exchange believes that this market will provide an attractive alternative to companies being delisted from another national securities exchange for failure to meet quantitative listing standards (including price or other market value measures) and to smaller companies contemplating an initial exchange listing. The Exchange further believes that the proposed listing venue will provide a transparent, well-regulated marketplace for these companies and their investors.[10] As is currently the case with respect to the trading occurring on the Exchange pursuant to unlisted trading privileges, FINRA will regulate market activity and staff of the Exchange will monitor real-time trading of securities listed on the BX Venture Market.

The Exchange will disseminate quotation and transaction information about securities listed on the BX Venture Market via several market data products to ensure broad dissemination of quotation and last sale information consistent with that provided by the network processors for national market system securities. This information will include a market center identifier and the Exchange will adopt a display requirement such that data vendors who receive data from the Exchange will have to identify when the BX Venture Market is the listing market for a security and clearly differentiate those securities from securities listed on Nasdaq or other exchanges or traded over-the-counter when displaying information to external users on their single security quotation screens.

The Exchange is also committed to ensuring that quotations and transaction information from BX are consolidated fully with similar information from over-the-counter quoting and trading that FINRA supervises, and is working with FINRA in that regard.

The assignment of symbols for companies listed on the BX Venture Market will be governed by the existing National Market System Plan for the Selection and Reservation of Securities Symbols, which is the exclusive means of allocating and using trading symbols. Pursuant to that Plan, securities listed on the BX Venture Market, like every other national securities exchange today, are eligible to have a trading symbol of from [sic] one to five characters. This eligibility is important because the BX Venture Market is intended to afford a listing venue for companies formerly listed on other national securities exchanges, which will want to retain their symbols.[11] In approving the symbology Plan, the Commission distinguished securities listed on an exchange, which can trade with a symbol of from [sic] one to five characters, from those trading over the counter, which can trade only with a four or five character symbol, noting that "[e]xchange listing standards are approved by the Commission and must include corporate governance requirements that comply with Rule 10A–3 under the Exchange [sic] Act. Issuers traded on over-the-counter equity venues (including the OTCBB and Pink Sheets) are not subject to such listing standards."[12]

Listing Requirements

The BX Venture Market would list Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights and Warrants. To be listed on the BX Venture Market, companies will need to meet the following qualitative listing standards, each of which is equivalent to the comparable listing standard of Nasdaq or is derived from the Federal securities laws:

(a) The company must be registered under Section 12(b) of the Act[13] and current in its periodic filings with the Commission and, as a result, subject to the requirements of the Sarbanes-Oxley Act of 2002[14] (proposed Rule 5210(a) [sic][15]);

(b) The company must have a fully independent Audit Committee comprised of at least three members and comply with the requirements of SEC Rule 10A–3, promulgated under the Act[16] (proposed Rule 5605(c));

(c) The company must have independent directors make compensation decisions for executive officers (proposed Rule 5605(d));

(d) The company will be prohibited from taking any corporate action with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of the company's common stock registered pursuant to Section 12 of the Act (proposed Rule 5640);

(e) The company's auditor will be required to be registered with the Public Company Accounting Oversight Board[17] (proposed Rules 5210(b) and 5250(c)(3));

(f) The company will be required to hold an annual shareholders' meeting and solicit proxies for each shareholders' meeting (proposed Rule 5620);

(g) The company will be required to obtain shareholder approval for the use of equity compensation (proposed Rule 5635);

(h) The company will be required to adopt a code of conduct, applicable to all directors, officers and employees (proposed Rule 5610);

(i) The company will be required to conduct an appropriate review and oversight of all related party transactions, to address potential conflict of interest situations (proposed Rule 5630);

(j) The company will be required to disclose material information through any Regulation FD compliant method (or combination of methods) (proposed Rule 5250(b) and IM–5250–1);

(k) The listed securities must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act[18] (proposed Rules 5210(c) and 5255);

(l) Public "shells" would not be allowed to list (proposed Rule 5101); and

(m) The Exchange will conduct a public interest review of the company and significant persons associated with

[9] The Exchange notes that not all qualitative requirements imposed by other exchanges would be required. *See* Listing Requirements, *infra,* for a full discussion of the proposed quantitative and qualitative requirements for listing on BX.

[10] The Exchange will propose in a separate rule filing changes to the BX Equities Platform to govern trading of, and reporting of transactions in, these listed securities and introducing and modifying market data products to permit dissemination of accurate quotation information and reporting of transactions.

[11] The Commission found that allowing all exchanges to utilize from one to five characters minimizes investor confusion when a company changes its listing from one venue to another. Securities Exchange Act Release No. 58904 (November 6, 2008), 73 FR 67218 at 67227 (November 13, 2008) ("The Commission finds that allowing the automatic portability of a symbol in the event that an issuer transfers its listing to another exchange will further the purposes of the Act and should reduce investor confusion by allowing the symbol already associated with the issuer to continue to be used by the issuer on the new exchange."). The Commission also noted that the portability feature of the plan would promote "competition among listing markets, *including potential new listing markets.*" *Id.* at 67224 (emphasis added).

[12] *Id.* at 67225 (footnotes omitted). The Exchange notes that it will have listing standards approved by the Commission, including corporate governance requirements that comply with Rule 10A–3, and go far beyond those requirements.

[13] 15 U.S.C. 78l(b).

[14] 15 U.S.C. 7201–7266.

[15] The Commission notes that the correct reference should be proposed Rule 5210(a) and 5210(e).

[16] 17 CFR 240.10A–3.

[17] *See* Section 102 of the Sarbanes-Oxley Act, 15 U.S.C. 7212.

[18] 15 U.S.C. 78q–1.

it (proposed Rule 5101 and IM–5101–1). A company would not be eligible for listing if any executive officer or director was involved in any event that occurred during the prior five years that is required to be disclosed under Item 401(f)(2)—(8) of Regulation S–K.

In addition, the BX Venture Market would apply the following quantitative listing standards, set out in proposed Rules 5505 (initial listing) and 5550 (continued listing), which are designed to assure a minimum level of trading consistent with a public market for the securities:

(a) 200,000 publicly held shares;

(b) 200 public shareholders, at least 100 of which must be round lot holders for initial listing, and 200 public shareholders for continued listing;

(c) A market value of listed securities of at least $2 million for initial listing and $1 million for continued listing;

(d) Two market makers; and

(e) A minimum initial listing price of $0.25 per share for securities previously listed on a national securities exchange and $1.00 per share for securities previously quoted in the over-the-counter market. For continued listing, securities will be required to maintain a minimum $0.25 per share bid price. Further, with respect to companies not previously listed on a national securities exchange, the BX Venture Market will also require for initial listing that the company have either $1 million stockholders' equity or $5 million total assets, a one year operating history, and a plan to maintain sufficient working capital for the company's planned business for at least twelve months after the first day of listing.

The Exchange would also require that rights and warrants will only be eligible for initial and continued listing if the underlying security is listed on the BX Venture Market or is a covered security, as described in Section 18(b) of the Securities Act of 1933.[19]

The proposed listing standards are designed to allow companies that are being delisted from another national securities exchange for failure to meet that exchange's quantitative listing requirements the opportunity to provide their investors with a better regulated, more transparent trading environment than may otherwise be available in the over-the-counter markets. In addition, the Exchange believes that allowing these companies to continue trading on a national securities exchange may enable some institutional investors to continue their ownership stake in the company, which could provide greater stability to the company's shareholder base and possibly avoid forced sales by such investors.[20] The Exchange also believes that companies currently traded over-the-counter could view this market as an aspirational step towards a listing on another national securities exchange. The Exchange believes that the agreement of such companies to comply with the Exchange's corporate governance standards and the application of the Exchange's public interest authority will provide additional protections to their investors than would be available in their present trading venue. Moreover, the Exchange believes that a listing on the BX Venture Market could help such companies raise capital, in turn promoting job creation within the United States. Finally, the Exchange believes that the BX Venture Market will be a more attractive alternative to domestic companies that might otherwise have considered a listing on non-U.S. junior markets, which generally have lower listing requirements.

Nonetheless, the Exchange recognizes that the listing requirements for the BX Venture Market will be lower than those of the NASDAQ Stock Market and other national securities exchanges, and that the market will, therefore, attract smaller, less liquid companies, which may create higher risks for investors. As such, to avoid investor confusion, we will make every effort to distinguish the proposed BX Venture Market from the NASDAQ Stock Market, which is also owned by the NASDAQ OMX Group. In that regard, the listing rules of the BX Venture Market will specify that a BX Venture Market-listed company should refer to its listing as on the BX Venture Market, unless otherwise required by applicable rules or regulations, and that such company should never represent that it is listed on The NASDAQ Stock Market. To enforce this prohibition, the Exchange will monitor the press releases issued by a BX Venture Market-listed company and will annually review the company's Web site to determine how the company is referring to its listing. Similarly, in describing this listing venue, the Exchange will generally refer to it as the BX Venture Market and not as NASDAQ OMX BX. The Exchange will also include information on its Web site describing the differences between the BX Venture Market and other national securities exchanges, including Nasdaq. Finally, as noted earlier, the Exchange will require data vendors to identify when the BX Venture Market is the listing market for a security and clearly differentiate those securities from securities listed on Nasdaq or other exchanges or traded over-the-counter when displaying information to external users on their single security quotation screens.

The BX Venture Market will not initially list a company if an executive officer or director of the company was involved in any event that occurred during the prior five years that is required to be disclosed under Item 401(f)(2)—(8) of Regulation S–K.[21] These events include criminal convictions and pending charges, violations of securities laws, and court or administrative actions barring or limiting the individual from certain security related activities. Similarly, the Exchange will review proxy statements and other public filings of listed companies. If a listed company discloses a proceeding against an executive officer or director under Item 401(f)(2)—(8) of Regulation S–K, the Exchange would provide the company with thirty days to remove the executive officer or director. If the company does not do so, the Exchange would send a delisting notification to the company.

In addition, the Exchange will have the discretionary authority to deny listing to or delist any otherwise qualified security when necessary to preserve and strengthen the quality of and public confidence in its market. Proposed IM–5101–1 provides a non-exclusive description of circumstances where the Exchange may exercise that discretion, including when an individual associated with the company has a history of regulatory misconduct that does not implicate the automatic bar described above. This would arise, for example, where an executive officer or director has reported misconduct that occurred between five and ten years before the disclosure or misconduct not required to be disclosed under Item 401 of Regulation S–K. This would also arise when an individual who is not an executive officer or director, but who has significant influence on or importance to the company, has a history of regulatory misconduct. In that regard, the Exchange ordinarily would apply its discretionary authority to deny initial or continued listing to a company if a control person, such as a significant shareholder, has a regulatory history, which is required to be disclosed under Item 401(g) of Regulation S–K.[22] In

[19] 15 U.S.C. 77r(b).

[20] Many institutional investors have investment policies that limit their ownership to securities listed on a national securities exchange, or that prohibit the ownership of securities that only are traded in the over-the-counter market.

[21] 17 CFR 229.401(f)(2)–(8).

[22] The Exchange may, however, in rare circumstances, permit the listing of a company if,

order to apply this authority, the Exchange intends to conduct background investigations of executive officers and directors and other significant people associated with a company in connection with its review of applications for initial listing, as well as whenever a new executive officer or director is associated with a BX Venture Market-listed company, using public databases, such as Lexis-Nexis. The Exchange will also retain outside firms to assist in its review as needed, including investigative, accounting and law firms. In that regard, the Exchange expects that it would especially rely on outside firms when researching a regulatory history that may have occurred in jurisdictions outside of the United States, where the availability of information and language barriers could otherwise complicate such research. The Exchange's listing application will also solicit information about certain inquiries, investigations, lawsuits, litigation, arbitrations, hearings, or other legal or administrative proceedings against the Company and its executive officers, directors, and ten percent or greater shareholders.

The head of the Exchange's Listing Department, who will have no marketing responsibilities and will report to NASDAQ OMX's Chief Regulatory Officer, will be involved in all decisions concerning whether to permit or deny listing to a company based on a public interest concern and the Exchange's Chief Regulatory Officer will be required to approve the listing of any company that has disclosed information about an executive officer, director, or control person under Items 401(f)(2)–(8) or 401(g) of Regulation S–K that does not trigger the automatic bar described above.

The Exchange will not approve for initial listing, or allow the continued listing, of shell companies.[23] This prohibition is based on concerns that the investors in shell companies are unaware of the ultimate business in which they are investing and that trading in such securities is more susceptible to market manipulation.

BX listings and delistings will be processed by the same staff currently in Nasdaq's Listing Qualifications Department, which presently includes 13 continued listing analysts and four initial listing analysts. This staff is extremely experienced in regulatory analysis, with the average person having over ten years of experience at Nasdaq. Should the workload resulting from the new BX Venture Market prove sufficiently high, the Exchange and Nasdaq have each committed to hiring additional staff, as necessary. In that regard, the staffing within Listing Qualifications is now, and will continue to be, reviewed regularly by Nasdaq's Chief Regulatory Officer and Regulatory Oversight Committee and will also be reviewed by the Exchange's Regulatory Oversight Committee.

The Exchange proposes that any company that meets the quantitative (*e.g.,* financial) requirements for listing on Nasdaq will not be allowed to initially list on the BX Venture Market. This will assure that such companies only become listed on the exchange with higher listing standards.

Given that the Exchange expects to list companies that do not meet the quantitative listing requirements of the primary existing national securities exchanges, it is expected that BX Venture Market-listed companies will include smaller companies and companies facing business or other challenges. Thus, the proposed quantitative standards for the BX Venture Market were deliberately structured to be lower than those of the other primary exchanges. In that regard, the minimum price requirement for listing on the BX Venture Market will be $0.25 per share for a security previously listed on another national securities exchange and $1.00 per share for a security previously quoted in the over-the-counter market or listing in connection with its initial public offering. Until September 30, 2011, the Exchange would consider any company that was listed on another national securities exchange at any time since January 1, 2008, to be eligible to list with a $0.25 per share price. The Exchange believes it appropriate to consider a company delisted since January 1, 2008, as previously quoted on another national securities exchange because the BX Venture Market would not have been available to such companies when they were delisted. The Exchange believes it is reasonable to look back to January 1, 2008, when the financial markets began facing difficulties, which resulted in an unusually large number of companies being delisted. Furthermore, the Exchange believes it is appropriate to continue this treatment until September 30, 2011, to assure that such companies have an adequate opportunity to learn about the BX Venture Market and sufficient time to complete their application and have that application processed by the Exchange. After September 30, 2011, a company will be considered to have been previously listed on a national securities exchange, and therefore eligible to list with a $0.25 per share price, only if it was listed on such an exchange at any time during the three months prior to its listing on the BX Venture Market. The Exchange believes that this three month period will allow the company sufficient time to apply for listing on the BX Venture Market and have its application processed.

For continued listing, a security will be required to maintain a minimum $0.25 per share bid price.[24] If the security does not maintain a minimum $0.25 per share bid price for 20 consecutive trading days, Exchange staff would issue a Staff Delisting Determination and the security would be suspended from trading on the BX Venture Market.[25] A company could appeal that determination to a Hearings Panel; however, such an appeal would not stay the suspension of the security.[26] During the Hearings Panel process, the security could regain compliance by achieving a $0.25 per share minimum bid price while trading on another venue, such as the over-the-counter market, for ten consecutive days. However, if the company has received three or more Staff Delisting Determinations for failure to comply with minimum price requirement in the prior 12 months, the company could only regain compliance by achieving a closing bid price of $0.25 per share or more for at least 20 consecutive trading days. The Exchange believes that this higher requirement for companies that were previously non-compliant is appropriate to reduce the likelihood of future instances of non-compliance and the concomitant investor confusion concerning the ability of the company to remain listed. If the Hearings Panel determines that the security has satisfied the applicable standard to regain compliance, the trading halt would be terminated and the security would resume trading on the Exchange.

To be eligible for initial listing, a company not previously listed on a national securities exchange must have at least one year operating history, a minimum of either $1 million in

for example, the shareholder did not acquire its shares directly from the company and has no role in the management or operations of the company.

[23] Proposed Rule 5101 sets forth a number of factors that the Exchange will consider in determining whether a Company is a shell, including whether the Company is considered a "shell company" as defined in Rule 12b–2 under the Act, 17 CFR 240.12b–2.

[24] The Exchange notes there is also no price requirement for initial or continued listing on the National Stock Exchange or for continued listing on NYSE Amex and therefore that the proposed continued listing requirement exceeds the requirement of those exchanges.

[25] Proposed Rule 4120(a)(12).

[26] Proposed Rule 5815(a)(1)(C).

stockholders' equity or $5 million in total assets, and demonstrate that it has a plan to maintain sufficient working capital for its planned business for at least twelve months after the first day of listing. The Exchange believes that these requirements will help assure that a company that was not previously subject to exchange regulation nonetheless has a credible and sustainable business.

The Exchange believes that the proposed public float, holder and market maker requirements, together with the minimum market value of listed securities requirement, will assure sufficient liquidity in listed securities. In that regard, the Exchange notes that the shareholder and publicly held shares requirements are comparable to, or higher than, requirements for listing a preferred stock or secondary class of common stock on the Nasdaq Capital Market, which require 100 round lot shareholders and 200,000 publicly held shares. The Exchange is not aware of any difficulties in the trading in securities meeting these requirements. Further, requiring two market makers will assure competing quotations for potential buyers and sellers of the securities listed on the BX Venture Market. Finally, the Exchange believes that the minimum market value of listed securities requirement will help assure that the company issuing the securities is of a sufficient size to generate interest from investors and market participants. While these proposed standards may be lower than those of other exchanges, investors will be protected by the fact that securities listed on the BX Venture Market would be considered penny stocks under Exchange Act Rule 3a51–1, unless they qualify for an exemption from the definition of a penny stock.[27] As such, broker-dealers would be required to pre-approve their customers for trading in penny stocks and investors will obtain the disclosures required to be made by broker-dealers in connection with penny stock transactions, providing them with trade and market information prior to effecting a transaction. Further, there will be no "blue sky" exemption available under Section 18 of the Securities Act of 1933,[28] so companies will be required to satisfy State law registration requirements and other State laws that regulate the sale and offering of securities. Because some State laws and regulations may provide an exemption from certain registration or "blue sky" requirements for companies listed on the former Boston Stock Exchange, based on the higher listing standards previously applied by that Exchange, proposed Rule 5001 would provide that the Exchange will take action to delist any company listed on BX that attempts to rely on such an exemption. Companies will also agree not to rely on any such exemption as a provision of the BX Listing Agreement. Listed companies will be required to represent to the Exchange that they are not relying on any such exemption in connection with any securities offering and will be required to provide the Exchange with copies of any "blue sky memoranda" prepared in connection with the issuance of shares.[29] These steps will allow the Exchange to assure that the company is not inappropriately relying on such an exemption.

The BX Venture Market corporate governance requirements are generally comparable to those of the other exchanges. The Exchange would require that a listed company have an audit committee comprised of at least three independent directors that also meet the requirements of SEC Rule 10A–3.[30] For a director to be considered an independent director, the company's board would have to determine that the individual does not have a relationship which, in the board's opinion, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.[31] The board would be precluded from finding a director independent based on certain relationships, including if that director is currently an employee of the company or was employed by the company during the prior three years (including as an executive officer), accepted certain compensation or payments from the company during the prior three years, or had a family member with certain affiliations with the company.[32]

The audit committee would be required to have a charter setting out its responsibilities, including the committee's purpose of overseeing the accounting and financial reporting processes of the company and the audits of the company's financial statements and the responsibilities and authority necessary to comply with SEC Rule 10A–3.[33] The audit committee, or another independent body of the board, will also be required to conduct an appropriate review and oversight of any related party transaction.[34] The Exchange believes that this requirement will limit the potential for self-dealing in connection with any related party transactions.

The Exchange would also require that independent directors make compensation decisions concerning the chief executive officer and other executive officers.[35] Independent directors would be required to meet on a regular basis in executive sessions.[36] These requirements for audit committees, compensation decisions, and executive sessions are identical to those of Nasdaq and substantially similar to those of the other national securities exchanges and the Exchange believes they will serve to empower the independent directors of its listed companies.

While the Exchange would require that a listed company have at least three independent directors to satisfy the audit committee requirement described above, it would not require that a majority of the company's board of directors be independent or an independent nomination committee because the Exchange believes those requirements could impose significant additional costs on these smaller companies and therefore discourage companies from pursuing an otherwise beneficial listing. In that regard, given the significant responsibilities imposed on audit and compensation committee

[27] 17 CFR 240.3a51–1. The Exchange is not seeking an exemption from the penny stock rules for securities listed on BX; however, a security may be excluded from the definition of a penny stock as a result of the security having a price in excess of $5 or its issuer having net tangible assets in excess of $2 million (if the issuer has been in continuous operation for at least three years) or $5 million (if the issuer has been in continuous operation for less than three years) or average revenue of at least $6 million for the last three years. Rule 3a51–1(d) and (g), 17 CFR 240.3a51–1(d) and (g).

[28] 15 U.S.C. 77r.

[29] Proposed Rule 5250(e)(7). The Exchange has proposed to add these requirements in response to comments submitted on the original proposal.

[30] 17 CFR 240.10A–3. *See* proposed Rule 5605(c)(2). Companies may be eligible for a phase-in or cure period with respect to certain of these requirements.

[31] Proposed Rule 5605(a)(2) and IM–5605–1. The proposed definition of an independent director is identical to Nasdaq's definition of an independent director.

[32] *Id.*

[33] Proposed Rule 5605(c)(1).

[34] Proposed Rule 5630.

[35] Proposed Rule 5605(d) and IM–5605–6. A company can satisfy this requirement by having their independent directors make these decisions in executive session, or by having independent directors sit on a compensation committee. If the company chooses to use a compensation committee and the committee is comprised of at least three members, one director who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee under exceptional and limited circumstances, provided the company makes appropriate disclosure. Of course the Exchange will adopt rules required by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act following the necessary SEC rulemaking related to that provision.

[36] Proposed Rule 5605(b).

members, directors who serve on these committees are sometimes reluctant to serve on other committees. As such, if the BX Venture Market were to also require an independent nominations committee, companies may have to increase the size of their boards and add additional independent directors. Similarly, requiring that independent directors comprise a majority of a company's board could also require companies to add additional independent directors. In each case, the need to add independent directors would impose additional costs on the company.[37] Moreover, nothing in the Commission's rules or the Act mandate these requirements.[38] However, the Exchange believes that the requirement for executive sessions of the independent directors will provide a forum for the independent directors to consider whether the governance structure of the company is appropriate and raise any concerns, notwithstanding the lack of a majority independence and nominations committee requirement.

Companies listing on the BX Venture Market will be permitted to phase in compliance with the audit committee and compensation committee requirements following their listing. With respect to the audit committee requirements, a company listing in connection with its initial public offering would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of the date of effectiveness of the company's registration statement; and all independent members within one year of the date of effectiveness of the company's registration statement. For this purposes, a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions in SEC Rule 10A–3(b)(1)(iv)(A), namely that the company was not, immediately prior to the effective date of its registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

With respect to the compensation committee requirement, a company listing in connection with its initial public offering, upon emerging from bankruptcy, or that otherwise was not subject to a substantially similar requirement prior to listing (such as a company only traded in the over-the-counter market) would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of listing; and all independent members within one year of listing. For this purposes, a company will be considered to be listing in conjunction with an initial public offering if immediately prior to listing it does not have a class of common stock registered under the Act.

A company that transfers to the BX Venture Market from another national securities exchange with a substantially similar requirement will be immediately subject to the audit and compensation committee requirements, provided that the company will be afforded the balance of any grace period afforded by the other market.

The Exchange will require companies to adopt a code of conduct applicable to all directors, officers and employees.[39] Any waivers of the code for directors or executive officers must be approved by the board and disclosed. The Exchange believes that this requirement will help promote the ethical behavior of individuals associated with companies listed on the BX Venture Market.

In addition, the Exchange will require shareholder approval when a company adopts or materially amends a stock option or purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants.[40] The Exchange would not require shareholder approval for other share issuances, however, given that the companies expected to list on the Exchange may have a greater need to issue shares more frequently or more quickly, due to their expected smaller size and the business challenges they may be facing. As such, the Exchange believes that the cost and delay associated with seeking approval for share issuances would discourage companies from pursuing an otherwise beneficial listing.[41] Nonetheless, the Exchange will require listed Companies to provide notice of any 5% change in its shares outstanding[42] and the Exchange Staff will review such issuances for public interest concerns, such as issuances significantly below the market price or for the benefit of related parties.

Review Process

Companies denied initial or continued listing would be afforded a review process similar to that contained in the existing Rule 4800 Series of the Exchange's rules, which was modeled on the process available to companies listed on Nasdaq.[43] The Exchange's Listing Qualifications staff only will be able to allow time-limited exceptions for certain deficiencies from the continued listing standards, such as the failure to file periodic reports, certain of the corporate governance requirements and any quantitative deficiency which does not contain a compliance period.[44] Other of the continued listing requirements would provide for automatic compliance periods, including the market maker, market value of publicly held shares and audit committee requirements.[45] If the company fails to timely solicit proxies or hold its annual meeting or fails to meet the minimum price requirement, or if staff has public interest concerns in connection with the company, Listing Qualifications staff will issue an immediate delisting letter to the company.[46] Any other deficiency would result in the Listing Qualifications staff issuing a Public Reprimand Letter or a delisting notification.[47] Hearings Panels composed of individuals not affiliated with the Exchange would be permitted to grant additional time to companies that received a delisting notification, or that were denied initial listing. A company could appeal a decision of the Hearings Panel to the Listing and Hearing Review Council, which is a committee appointed by the Exchange's Board to act for the Board with respect to listing decisions.[48] The Listing and Hearing Review Council decision would be final, unless it is called for a discretionary review by the Exchange Board. The compliance periods and discretion to allow a non-compliant company to remain listed are generally shorter on the BX Venture Exchange than would be allowed an equivalent company listed on Nasdaq. For example, a Hearings Panel would only be permitted to grant 90 calendar days for a company to regain compliance with a listing standard, instead of the

[37] The 2008–2009 Director Compensation Report prepared by the National Association of Corporate Directors (available from *http://www.nacdonline.org/*) found that the median total direct compensation per director was $78,060 for smaller companies (defined as companies with annual revenues of $50 to $500 million).

[38] *See, e.g.,* Item 407(a) of Regulation S–K, which requires disclosure of non-independent directors who serve on nomination committees, implicitly allowing such service.

[39] Proposed Rule 5610.

[40] Proposed Rule 5635.

[41] In this regard, the proposed rules are comparable to the rules of the National Stock Exchange, which require shareholder approval for equity compensation issuances but not for other share issuances. *See* National Stock Exchange Rule 15.6.

[42] Proposed Rule 5250(e)(1).

[43] Nasdaq Listing Rules 5800–5899.

[44] Proposed Rule 5810(c)(2).

[45] Proposed Rule 5810(c)(3).

[46] Proposed Rule 5810(c)(1).

[47] Proposed Rule 5810(c).

[48] Section 6.1 of the By-Laws on NASDAQ OMX BX, Inc.

180 calendar days available on Nasdaq. Similarly, a company that falls below the market value of listed securities requirement would be provided a 90 calendar day compliance period, instead of the 180 days available to a Nasdaq company.

Oversight

FINRA will regulate market activity on the BX Venture Market, as it does today for Nasdaq. Based on its breadth of experience overseeing the over-the-counter markets, FINRA will also enhance its review process by calibrating its surveillance patterns to detect potential issues that may arise particularly in low priced stocks. FINRA's review will include trading which takes place on the over-the-counter market in securities listed on the BX Venture Market. In addition, SMARTS Group, which is a world-leading technology provider of market surveillance solutions to exchanges and regulators around the world,[49] will create a new suite of quoting and trading patterns to detect suspicious activity in low priced and less widely traded securities. Further, FINRA will review the activity of member firms quoting on the BX Venture Market when conducting their reviews of these firms. This review will include "focused exams" concentrated on sales practices and firm oversight.

The Exchange will provide a monthly report to the SEC staff describing any significant developments on the BX Venture Exchange, including companies added or removed from the market during that period. In addition, the Exchange's Chief Regulatory Officer will provide quarterly reports describing the listing and surveillance activities of the Exchange during the prior quarter. The Exchange will also provide copies of the Listing Department's procedures manuals to the Commission's Office of Compliance, Inspections and Examinations.

Fees

Companies would be required to submit an application review fee of $7,500 with their application for listing on the BX Venture Market, and would be required to pay a $15,000 annual fee for the first class listed on the Exchange and $5,000 for each additional class. The annual fee would be pro-rated for a company's first year of their listing. The application review fee will allow the Exchange to recover some of the costs associated with the initial review of the company's application, including staff time and the systems supporting the initial review process. The annual fee would similarly offset the staff and system costs of continued monitoring of the company. The proposed application and annual fees are substantially less than those charged by other national securities exchanges.[50] Companies that were previously listed on Nasdaq would receive a credit, which can only be used to offset the annual fee, for any annual fees paid to Nasdaq during the same calendar year that they initially list on the BX Venture Market, for the months following their delisting from Nasdaq. The Exchange believes this credit is a reasonable allocation of fees under the Act because the Exchange and Nasdaq have the same ultimate parent, The NASDAQ OMX Group, Inc., and the company will have paid Nasdaq a non-refundable fee to provide similar services as those that will be provided by the Exchange under its annual fee. As such, the Exchange believes it would be inequitable to charge the company a second fee in the same year to support the provision of those services.

Fees would also be assessed for certain one-time events, such as a $7,500 fee for substitution listing events, a $2,500 fee for record-keeping changes, and a $4,000 or $5,000 fee for a written or oral hearing, respectively. These fees are identical to those charged on Nasdaq.

Under Proposed Rule 5602, a company considering a specific action or transaction can request an interpretation from the Exchange, and in return, the Exchange will prepare a responsive letter as to how the rules apply to the proposed action or transaction. No company is required to request an interpretation, and staff will orally discuss the application of the Exchange's rules with companies without any additional charge. However, if the company seeks a written response, the Exchange proposes to charge a $15,000 fee to recoup the cost of staff's time in reviewing and responding to the request.[51] The Exchange believes that the fee is appropriate, as the written response is applicable only to the company that requests it. The Exchange also believes that the written interpretive process, and the associated fee, will provide an additional public benefit in that staff will prepare anonymous summaries of interpretations, as well as frequently asked questions based on requests received from companies, including those withdrawn before a written response is issued. These summaries and questions will be posted on the Exchange's Web site so that the general public, practitioners, and other companies can better understand how the Exchange applies its rules and policies. In this way, the overall need to request such interpretations is minimized, thus reducing burdens on companies and staff alike.

Other Changes

As part of the proposed rule change, the Exchange is deleting portions of the Rule 4000 Series related to the listing and trading of securities eligible to be listed on the BX Venture Market and correcting cross-references to those deleted sections. The Exchange is maintaining those provisions of the Rule 4000 applicable to securities that will not be eligible to be listed on the BX Venture Market, such as Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts, Securities Linked to the Performance of Indexes and Commodities, and Managed Fund Shares, to enable the continued trading of such securities on the Exchange pursuant to unlisted trading privileges.

The Exchange is deleting Rule 4430, which provided listing criteria for limited partnership rollup transactions using language that was substantially similar to language contained in FINRA Rule 2310. Instead, the Exchange addresses these issues in proposed Rule 5210(h). This rule adopts the same approach taken by Nasdaq and NYSE AMEX by incorporating the FINRA rule by reference.[52] In this manner, the Exchange satisfies the requirement of Section 6(b)(9) of the Exchange Act,[53] which requires that the rules of a national securities exchange prohibit certain limited partnership rollup transactions.

The Exchange is also moving the additional requirements applicable to the listing of securities issued by NASDAQ OMX or its affiliates from Rule 4370 to Rule 5701.

[49] SMARTS Group is a subsidiary of NASDAQ OMX.

[50] For example, the initial listing fees for listing common stock on the NASDAQ Capital Market range from $50,000 to $75,000 and the annual fees are $27,500; the initial listing fees for listing common stock on NYSE Amex range from $50,000 to $70,000 and the annual fees range from $27,500 to $40,000; the initial listing fees for listing common stock on the New York Stock Exchange range from $150,000 to $250,000 and the annual fees range from $38,000 to $500,000. *See* Nasdaq Rule 5920(a)(1) and (c)(1)(A), NYSE Amex Listed Company Guide Sections 140 and 141, and NYSE Listed Company Manual 902.03.

[51] No fee would be charged in connection with requests involving a company's initial listing application given that the company will pay an application fee.

[52] Nasdaq Rule 5210(h) and NYSE Amex Listed Company Guide Section 126.

[53] 15 U.S.C. 78f(b)(9).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[54] in general and with Sections 6(b)(5) of the Act,[55] 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 regulating, clearing, settling, processing information with respect to, and 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 proposed new listing venue will advance these goals by allowing qualified issuers to list on a transparent, well-regulated marketplace with increased transparency about the trading of these securities, thereby protecting investors and the public interest and helping to prevent fraudulent and manipulative acts and practices.

In addition, the Exchange believes that the proposed market is consistent with Section 17B of the Act, which codifies Congress' findings that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks and that a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market. Section 17B further instructs the Commission to facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks, as the Exchange will for securities listed on the BX Venture Market, through one or more automated quotation systems operated by a registered securities association or a national securities exchange, providing reliable pricing information and reporting of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

[54] 15 U.S.C. 78f.

[55] 15 U.S.C. 78f(b)(5).

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. Procedure: Request for Written Comments

In the Order Instituting Proceedings, the Commission requested that interested persons provide written submissions of their views, data and arguments with respect to the issues identified above, as well as any others they may have identified with the proposal. In particular, the Commission invited the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. The Commission also stated that, although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[56]

As noted in the Order Instituting Proceedings, interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by January 24, 2011.[57] Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 8, 2011.[58]

In the Order Instituting Proceedings, the Commission asked that commenters address the merit of BX's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.[59] The Commission also specifically asked for comment on the following:

• Do commenters agree with BX's belief that the proposed BX listing market will provide a transparent, well-regulated marketplace for companies with smaller market capitalization contemplating an initial exchange listing and companies delisted from another national securities exchange for failure to meet quantitative listing standards? Why or why not?

• Is the proposed vetting and due diligence process of prospective issuers on the BX listing market sufficient to prevent companies that might erode investor confidence (due to potential fraud) in the market from listing? Why or why not?

• Given that BX-listed companies are likely to be smaller than listed companies on other exchanges, should BX undertake any additional measures (including additional surveillances) to reduce the risk of fraudulent and manipulative behavior with respect to the listing and/or trading of BX-listed securities? Why or why not?

• Do commenters believe there is any likelihood of investor confusion regarding the BX listing market? Would investors be inclined to believe that a BX-listed company is listed on Nasdaq? Are the Exchange's proposed actions to reduce or avoid investor confusion sufficient? Why or why not? If not, what additional measures should the Exchange undertake?

• Do the proposed initial and continued listing standards for the BX listing market assure sufficient liquidity in listed securities? Why or why not? Are there other listing criteria that commenters would suggest to better assure sufficient liquidity in listed securities?

• Are the proposed initial and continued listing standards for the BX listing market sufficiently designed to reduce the risk that an individual or small group of shareholders will be in a position to manipulate the listed security? Why or why not?

• Are the proposed initial and continued listing standards and the delisting process for the BX listing market sufficiently designed to prevent stocks that are of a type that historically have been prone to fraudulent schemes from being listed? Why or why not?

• Do commenters believe that the proposed delisting and appeals procedures and timeframes are sufficient and appropriate? Are the timeframes too long or too short? Why or why not?

• Are the proposed corporate governance standards for the BX listing market sufficiently designed to assure an appropriate level of corporate governance? Why or why not?

• Do commenters agree with the Exchange's belief that a BX listing could help companies raise capital and thus promote job creation within the United States? Why or why not?

[56] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[57] *See* Order Instituting Proceedings, *supra* note 4.

[58] *See id.*

[59] *See id.*

• Has BX sufficiently addressed how quotations and transactions reports relating to BX-listed securities will be disseminated? Will this result in fragmentation of pricing information relating to these securities? Will this undermine the ability of investors to receive best execution? Why or why not?

Comments may continue to be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2010–059 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–BX–2010–059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2010–059 and should be submitted on or before January 24, 2011.

[60] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32731 Filed 12–28–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63598; File No. SR–NYSEArca-2010–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the WisdomTree Managed Futures Strategy Fund

December 22, 2010.

I. Introduction

On November 1, 2010, NYSE Arca, Inc. ("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 list and trade shares ("Shares") of the WisdomTree Managed Futures Strategy Fund ("Fund") of the WisdomTree Trust ("Trust") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on November 17, 2010.[3] The Commission received no comments on the proposal. This order grants approval of 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. The Shares will be offered by the Trust, which is registered with the Commission as an investment company.[4] The Fund will be an actively managed exchange-traded fund. WisdomTree Asset Management, Inc. ("Adviser") is the investment adviser to the Fund. WisdomTree Investments, Inc. is the parent company of the Adviser. Mellon Capital Management Corporation ("Sub-Adviser") serves as the sub-adviser for the Fund. The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Fund. ALPS Distributors, Inc. serves as distributor for the Fund.

The Fund is managed using a strategy designed to provide returns that correspond to the performance of the Diversified Trends Indicator™ ("Benchmark").[5] The Fund seeks to achieve its investment objective by investing substantially all of its assets in a combination of commodity- and currency-linked investments (including investments linked to U.S. Treasuries) designed to correspond to the performance of the Benchmark, and U.S. government securities (as defined in Section 3(a)(42) of the Act, "Government Securities") that serve as collateral or otherwise back the commodity- and currency-linked investments.[6] Specifically, the Fund will invest at least 70% of its assets in a combination of: (i) listed commodity and financial futures contracts included in the Benchmark; [7] and (ii) forward currency contracts based on currencies represented in the Benchmark, in each case collateralized or otherwise backed by Government Securities. The Fund may invest up to 30% of its assets in a combination of swap transactions [8] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 63292 (November 9, 2010), 75 FR 70319 ("Notice").

[4] *See* Registration Statement on Form N–1A for the Trust filed with the Commission on July 22, 2010 (File Nos. 333–132380 and 811–21864) ("Registration Statement"). The Registration Statement became effective on September 20, 2010.

[5] The Benchmark is designed to capture the economic benefit derived from rising or declining price trends in the commodity, currency, and U.S. Treasury futures markets. The Benchmark consists of U.S. listed futures contracts on sixteen tangible commodities and eight financial futures. The sixteen commodity futures contracts are on: light crude oil, natural gas, RBOB gas, heating oil, soybeans, corn, wheat, gold, silver, copper, live cattle, lean hogs, coffee, cocoa, cotton, and sugar. The eight financial futures contracts are on: the Australian dollar, British pound, Canadian dollar, Euro, Japanese yen, Swiss franc, U.S. Treasury Notes, and U.S. Treasury bonds. Each contract is sometimes referred to as a "Component" of the Benchmark. Additional information relating to the Benchmark, including, without limitation, the sector aggregations, weightings, and position methodology can be found in the Registration Statement and Notice. *See* Notice and Registration Statement, *supra* notes 3 and 4.

[6] Additional information regarding the investments of the Fund can be found in the Registration Statement and Notice. *See id.*

[7] The Fund's investments in commodity futures contracts will be limited by the application of position limits imposed by the Commodity Futures Trading Commission and U.S. futures exchanges intended to prevent undue influence on prices by a single trader or group of affiliated traders. The Adviser represents that the Fund's investment in futures contracts will be limited to investments in the U.S. listed futures contracts included in the Benchmark, except that the Fund may invest up to 10% of its assets in U.S. listed commodity and currency futures contracts not included in the Benchmark in a manner designed to achieve its investment objective.

[8] The Fund will enter into over-the-counter swap transactions only with respect to transactions based on (i) the return of the Benchmark or any subset of the Benchmark, (ii) any Component in the Benchmark, or (iii) any commodity or currency represented in the Benchmark.

commodity-linked notes.[9] The Fund's investments in listed futures contracts, forward currency contracts, and swap transactions will be backed by investments in Government Securities in an amount equal to the exposure of such contracts.

The Fund will be managed so that the long and short exposure of the Fund's portfolio is economically similar to the long and short positions in the Benchmark. This does not, however, mean that the long and short exposures will be identical. The Fund's positions in such listed futures contracts may deviate from the Benchmark when the Adviser or the Sub-Adviser believes it is in the best interest of the Fund to do so.[10] For example, the Fund may deviate from the Benchmark in order to manage cash flows in and out of the Fund, such as in connection with the payment of dividends or expenses, to manage portfolio holdings around Benchmark changes, or to comply with the Investment Company Act of 1940 ("1940 Act"), the Commodity Exchange Act, the Internal Revenue Code of 1986, exchange position limits, or other applicable laws, rules and regulations.

The Fund's investment in Government Securities will be limited to investments: (i) to satisfy margin requirements, to provide collateral or to otherwise back investments in commodity- and currency-linked derivatives (such as futures contracts, forward contracts, and swaps); (ii) to help manage cash flows in and out of the Fund, such as in connection with the payment of dividends or expenses; or (iii) as a substitute for investments in the listed U.S. Treasury futures contracts included in the Benchmark. In addition, the Fund may invest in money market instruments with remaining maturities of one year or less, as well as cash and cash equivalents, in order to collateralize or otherwise back its positions in listed futures contracts, forward currency contracts, or swaps, or for cash management purposes. All money market securities acquired by the Fund will be rated investment grade. The Fund generally expects to maintain an average portfolio maturity of 90 days or less on its investments in money market securities.

The Fund will seek to gain exposure to the commodity and currency markets, in whole or in part, through investments in a subsidiary organized in the Cayman Islands ("Subsidiary"). The Subsidiary is wholly-owned and controlled by the Fund, and its investments will be consolidated into the Fund's financial statements. The Fund's and the Subsidiary's holdings will be disclosed on the Fund's Web site on a daily basis. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets at the end of each fiscal quarter. The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund's use of the Subsidiary is designed to help the Fund achieve exposure to commodity and currency returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies. The Subsidiary will comply with the 1940 Act except that, unlike the Fund, the Subsidiary may invest without limitation in commodity- and currency-linked investments based on commodities and currencies included within the Benchmark. The Subsidiary will otherwise operate in the same manner as the Fund with regard to applicable compliance policies and procedures. Because the Subsidiary's investments are consolidated into the Fund's, the Fund's combined holdings (including the investments of the Subsidiary) must comply with the 1940 Act.[11]

The Exchange states that the Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares,[12] and that the Shares must comply with Rule 10A–3 under the Act,[13] as provided by NYSE Arca Equities Rule 5.3, for initial and/or continued listing. Additional information regarding the Trust, the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, 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.[14]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules 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. 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,[18] 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 high-speed line. Intra-day and end-of-day prices for the Benchmark,[19] the listed futures contracts included in the Benchmark, the commodities and currencies represented in the Benchmark, and the forward currency contracts, swaps,

[9] Commodity-linked notes are over-the-counter debt instruments, typically issued by a bank or broker-dealer, that are designed to provide cash flows linked to the value of a reference asset. They provide exposure, which may include long and/or short exposure, to the investment returns of the reference asset underlying the note. The performance of these notes is determined by the price movement of the reference asset underlying the note. The Fund's investment in commodity-linked notes will be limited to notes providing exposure to (i) the Benchmark or any subset of the Benchmark, (ii) any Component of the Benchmark or (iii) any commodity or currency represented in the Benchmark.

[10] The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

[11] The Fund will not invest in non-U.S. equity securities (other than shares of the Subsidiary).

[12] The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share for the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. *See* Notice, *supra* note 3.

[13] 17 CFR 240.10A–3.

[14] *See* Notice and Registration Statement, *supra* notes 3 and 4.

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] Intra-day prices for the Benchmark are updated and disseminated at least every 15 seconds during the Core Trading Session on the Exchange. The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern Time.

notes and other derivatives based on the Benchmark are readily available through Bloomberg, other major market data providers, and broker-dealers. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[20] In addition, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intra-day value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. The Fund's Web site (*http://www.wisdomtree.com*) will include a form of the Prospectus and other quantitative information relating to NAV, updated on a daily basis, for the Fund.

The Commission further believes that the proposal to list and trade the Shares 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 Commission notes that the Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[21] If the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.[22] In addition, if the Portfolio Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs; if the interruption to the dissemination of the Portfolio Indicative Value 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.[23] Moreover, the Exchange represents that the Sub-Adviser is affiliated with multiple broker-dealers and 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.[24] In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. Further, the Commission notes that the Reporting Authority that provides 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.[25]

The Exchange has represented that the Shares are deemed to be 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 has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) 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.

(4) 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: (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 Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value 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.

(5) For initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 under the Act.[26]

(6) The Fund will not invest in non-U.S. equity securities (other than shares of the Subsidiary).

(7) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

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 Section 6(b)(5) of the Act[27] 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,[28] that the proposed rule change (SR–NYSEArca-2010–98), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32733 Filed 12–28–10; 8:45 am]

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[20] The Disclosed Portfolio will disclose the following information: Ticker symbol (if applicable), name or description of security or investment, number of shares or dollar value of investments held in the portfolio, and percentage weighting of the security or investment in the portfolio.

[21] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[22] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[23] *See id.* Trading in the Shares 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 the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[24] The Exchange represents that the Adviser is not affiliated with any broker-dealer.

[25] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[26] 17 CFR 240.10A–3.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63592; File No. SR–BX–2010–090]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BOX Trading Rules To Permit Trading Options on Leveraged (Multiple or Inverse) Exchange-Traded Notes and Broaden the Definition of "Futures-Linked Securities"

December 21, 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 December 15, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Section 3 (Criteria for Underlying Securities) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to: (a) Permit trading options on leveraged (multiple or inverse) exchange-traded notes, and (b) broaden the definition of "Futures-Linked Securities." The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter IV, Section 3(k) of the BOX Rules, titled Index-Linked Securities, to: (a) Permit trading options on leveraged (multiple or inverse) exchange-traded notes ("ETNs"), and (b) broaden the definition of "Futures-Linked Securities." ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trades as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Leveraged ETN Options

The Exchange proposes to amend Chapter IV, Section 3(k) of the BOX Rules to permit the listing of options on leveraged (multiple or inverse) ETNs. Multiple leveraged ETNs seek to provide investment results that correspond to a specified multiple of the percentage performance on a given day of a particular Reference Asset. Inverse leveraged ETNs seek to provide investment results that correspond to the inverse (opposite) of the percentage performance on a given day of a particular Reference Asset by a specified multiple. Multiple leveraged ETNs and inverse leveraged ETNs differ from traditional ETNs in that they do not merely correspond to the performance of a given Reference Asset, but rather attempt to match a multiple or inverse of a Reference Asset's performance.

The Barclays Long B Leveraged S&P 500 TR ETN ("BXUB"), the Barclays Long C Leveraged S&P 500 TR ETN ("BXUC") and the UBS AG 2x Monthly Leveraged Long Exchange Traded Access Securities ("E–TRACS") linked to the Alerian MLP Infrastructure Index due July 9, 2040 ("MLPL") currently trade on the NYSE Arca Stock Exchange and are examples of multiple leveraged ETNs. In addition, the Barclays ETN + Inverse S&P 500 VIX Short-Term Futures ETN ("XXV") currently trades on the NYSE Arca Stock Exchange and is an example of an inverse leveraged ETN. The NYSE Arca Stock Exchange also lists several other inverse leveraged ETNs for trading.[3]

Currently, Chapter IV, Section 3(k) of the BOX Rules provides that securities deemed appropriate for options trading shall include shares or other securities ("Equity Index-Linked Securities," "Commodity-Linked Securities," "Currency-Linked Securities," "Fixed Income Index-Linked Securities," "Futures-Linked Securities," and "Multifactor Index-Linked Securities," collectively known as "Index-Linked Securities") that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934), and represent ownership of a security that provides for the payment at maturity, as described below:

- Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset");
- Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options on commodities, or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing ("Commodity Reference Asset");
- Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options on currencies or currency futures or other currency derivatives or Currency Trust Shares (as defined in Subsection (i) of this Section 3), or a basket or index of any of the foregoing ("Currency Reference Asset");
- Fixed Income Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] These ETNs include: the Barclays Short B Leveraged Inverse S&P 500 TR ETN ("BXDB"), the Barclays Short C Leveraged Inverse S&P 500 TR ETN ("BXDC") and the Barclays Short D Leveraged Inverse S&P 500 TR ETN ("BXDD").

securities, supranational debt and debt of a foreign country or subdivision thereof or a basket or index of any of the foregoing ("Fixed Income Reference Asset");

• Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures ("Futures Reference Asset"); and

• Multifactor Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets ("Multifactor Reference Asset").

For purposes of Chapter IV, Section 3(k) of the BOX Rules, Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets together with Multifactor Reference Assets, collectively are referred to as "Reference Assets."

In addition, [sic] Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Chapter IV, Section 3(b) of the BOX Rules; or (ii) the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash, or cash equivalents, satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

The Exchange proposes to amend Chapter IV, Section 3(k) of the BOX Rules to expand the type of Index-Linked Securities that may underlie options to include leveraged (multiple or inverse) ETNs. To affect this change, the Exchange proposes to amend Chapter IV, Section 3(k) of the BOX Rules at subparagraph (i) by adding the phrase, "or the leveraged (multiple or inverse) performance" to each of the subparagraphs ((1) through (6)) in that section which set forth the different eligible Reference Assets.

The Exchange's current continuing listing standards for ETN options will continue to apply. Specifically, under Chapter IV, Section 4(k) of the BOX Rules, ETN options shall not be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Securities whenever the underlying Securities are delisted and trading in the Securities is suspended on a national securities exchange, or the Securities are no longer an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934). In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Index-Linked Securities in any of the following circumstances: (1) The underlying Index-Linked Security fails to comply with the terms of Chapter IV, Section 3(k), (2) in accordance with the terms of Chapter IV, Section 4(b), in the case of options covering Index-Linked Securities when such options were approved pursuant to Chapter IV, Section 3(k), except that, in the case of options covering Index-Linked Securities approved pursuant to Chapter IV, Section 3(k)(iii)(2), that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such Securities may only continue to be open for trading as long as the Securities are listed on a national securities exchange and are "NMS" stock as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to Chapter IV, Section 3(k), the value of the Reference Asset is no longer calculated; or (4) such other event shall occur or condition exist that in the opinion of the Exchange make further dealing in such options on BOX inadvisable. Expanding the eligible types of ETNs for options trading under Chapter IV, Section 3(k) of the BOX Rules will not have any effect on the rules pertaining to position and exercise limits [4] or margin.[5]

This proposal is necessary to enable the Exchange to list and trade on BOX options on shares of the BXUB, BXUC, XXV, BXDB, BXDC, BXDD and the MLPL. BOX believes the ability to trade options on leveraged (multiple or inverse) ETNs will provide investors with greater risk management tools. The proposed amendment to the Exchange's listing criteria for options on ETNs is necessary to ensure that the Exchange will be able to list options on the above listed leveraged (multiple and inverse) ETNs as well as other leveraged (multiple and inverse) ETNs that may be introduced in the future.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in leveraged (multiple and inverse) ETN options.

It is expected that The Options Clearing Corporation will seek to revise the Options Disclosure Document ("ODD") to accommodate the listing and trading of leveraged (multiple and inverse) ETN options.

Broaden the Definition of "Futures-Linked Securities"

The second change being proposed by this filing is to amend the definition of "Futures-Linked Securities" set forth in Chapter IV, Section 3(k)(i)(5) of the BOX Rules. Currently, the definition of "Futures-Linked Securities" is limited to securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures.

Chapter IV, Section 3(k) of the BOX Rules sets forth generic listing criteria for securities that may serve as underlyings for listed options trading. BOX believes that the current definition of "Futures-Linked Securities" is unnecessarily restrictive and requires the Exchange to submit a filing to amend the definition each time a new ETN is issued that tracks the performance of an index of futures/options on futures that is not enumerated in the existing rule. To address this issue, the Exchange is proposing to revise the definition of "Futures- Linked Securities" to provide that they are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of an index or indexes of futures contracts or options or derivatives on futures contracts ("Futures Reference Asset"). BOX notes that all ETNs eligible for options trading must be principally traded on a national securities exchange and must be an "NMS Stock." As a result, BOX believes that broadening the definition of

[4] *See* Chapter XIV, Section 5 (Position Limits for Broad-Based Index Options) Section 6 (Position Limits for Industry Index Options) and Section 8 (Exercise Limits) of the BOX Rules.

[5] *See* Chapter XIII concerning Margin Requirements.

"Futures-Linked Securities" by no longer specifically listing the types of futures and options on futures contracts that may be tracked by an ETN is appropriate.

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, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on leveraged (multiple or inverse) ETNs and implement the amended definition of "Futures-Linked Securities" immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[10] The Commission notes the proposal is substantively identical to a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.[11] For these reasons, the Commission designates the proposed rule change as operative upon filing.

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–BX–2010–090 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–090. 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.[12] All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–090 and should be submitted on or before January 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32728 Filed 12–28–10; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 63202 (October 28, 2010), 75 FR 67794 (November 3, 2010) (SR–CBOE–2010–080).

[12] The text of the proposed rule change is available on the Commission's Web site at *www.sec.gov*.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63588; File No. SR–NSCC–2010–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Enhance the Reconfirmation and Pricing Service, Including the Creation of the Obligation Warehouse

December 21, 2010.

I. Introduction

On October 10, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–NSCC–2010–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 25, 2010.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Reconfirmation and Pricing Service ("RECAPS") is NSCC's automated fail clearance system for eligible securities. Through RECAPS, members are provided with an opportunity on a quarterly basis to reconfirm and reprice compared transactions which remain unsettled (*i.e.,* fail transactions). As approved, the rule change modifies RECAPS to run on a more frequent basis, enhances RECAPS, and renames the RECAPS process the Obligation Warehouse ("OW" or "OW Service"). As more fully described below, the new enhanced service will provide: (1) Comparison of transactions that are not otherwise submitted by the applicable marketplaces or members themselves for trade comparison or recording through other NSCC trade capture services; (2) tracking, storage, and maintenance of unsettled obligations either compared through the service or forwarded to it from other NSCC services in accordance with NSCC rules including trades involving securities exited from NSCC's Continuous Net Settlement ("CNS") system, non-CNS Automated Customer Account Transfer Service ("ACATS") items,[3] NSCC Balance Order transactions, and Special Trades (collectively "OW Obligations");[4] and (3) repricing and netting of fail obligations. The tracking, storage, and maintenance functionality of the OW will provide transparency, will make information available to its users, will serve as a central depository of open (*i.e.,* failed or unsettled) broker-to-broker obligations, and will allow users to manage and to resolve exceptions (*e.g.,* "don't know" or "DK" obligations) in an efficient and timely manner. The OW will also simultaneously provide on-going maintenance and servicing of open OW Obligations such as adjustments for corporate actions and regular scans for CNS eligibility.[5]

Currently RECAPS allows members[6] to periodically reconfirm open, aged fails (*i.e.,* fails that are five or more days old), reprice such fails to the current market value, and when possible, net the reconfirmed and repriced fails. As part of the RECAPS process, those CNS-eligible recompared fails are forwarded to CNS for processing and settlement. Transactions in non-CNS eligible issues are repriced, netted, and allotted, when applicable, and Balance Orders generated for them or they are designated to settle trade-for-trade.

RECAPS provides reject and DK capabilities for received advisories. Advisories that are either "unresponded to" or "DK'd" are subject to close-out action under the rules of the appropriate marketplace. RECAPS requires members to respond through batch overnight submissions to all open fails submitted by a contraparty. RECAPS provides for a one-day settlement capability for all compared fails.

Obligation Warehouse

Many of the transactions submitted to RECAPS by members are subject to noncentralized, manual processes for purposes of comparison of fail details and fail confirmation. Under this rule change, NSCC will enhance and rename the RECAPS service as the OW to which members may submit and may subsequently maintain and manage their unsettled transactions. As part of these enhancements, NSCC will provide a trade matching and confirmation process pursuant to which members may submit to NSCC information on certain obligations that are not otherwise submitted to NSCC by the applicable marketplaces or by the members themselves through NSCC's other trade comparison or recording services.[7] Comparison of transactions submitted through the OW will occur in real-time. Obligations will be tracked and maintained within the OW and will be made available for RECAPS processing (as described below) until settled or otherwise cancelled. In addition, transactions exited from CNS, non-CNS-eligible ACATS items, Balance Orders, and Special Trades will also be forwarded to the OW for storage and maintenance and RECAPS processing.[8] Compared items stored in the OW (whether compared by the OW or forwarded to it from other NSCC services or systems) will be referred to as "OW Obligations." In order to further reduce manual processing by members, NSCC may automatically adjust any OW Obligations for certain mandatory reorganization events, which will initially be limited to adjustments for forward splits, name changes, redemptions, mergers (both cash and stock), and full calls with respect to bonds.[9]

As approved, the OW Service will now forward to CNS on a daily basis (or such other time frame as NSCC determines from time to time) OW Obligations in CNS-eligible securities.[10] However, the OW will not be a guaranteed service, and an obligation forwarded to CNS will only be guaranteed to the extent that the member pays its full settlement obligation on the date the item is originally scheduled to settle in CNS.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 63126 (October 18, 2010), 75 FR 65546 (October 25, 2010).

[3] Only non-CNS eligible ACATS items and CNS-eligible ACATS items that have been designated as ex-CNS shall be forwarded to the OW. Non-CNS ACATS items for mutual funds, limited partnerships, and safekeeping items, however, will not be eligible for OW.

[4] Balance Orders will be forwarded to the OW after netting and allotting has occurred in accordance with NSCC's Procedures.

[5] These functionalities will be made available at a date no less than ten business days following announcement of implementation by Important Notice.

[6] All NSCC members that are also members of the Financial Industry Regulatory Authority ("FINRA") are required to participate in the RECAPS service, however, the service is available to all NSCC members. *See* FINRA Rule 11190(a).

[7] Procedure II (Trade Comparison and Recording Service) sets forth the procedures for comparison of direct submissions by members and for trade recording of locked-in transactions. In accordance with Municipal Securities Rulemaking Board ("MSRB") rules, NSCC reports transactions in municipal securities compared through its Real-time Trade Matching ("RTTM") service to the MSRB on behalf of members; however, transactions submitted through the OW will not be reported by NSCC to the MSRB. In order to remain compliant with MSRB reporting requirements, members will have to continue to make submissions subject to MSRB rules through RTTM.

[8] Such items will be subject to the validation criteria of the systems or services that forwarded them to the OW; therefore, the matching or validation criteria (which are set forth in footnote 9 below) will not apply.

[9] Adjustments for mandatory reorganization events are expected to be available shortly after February 4, 2011, or a date no less than 10 business days following announcement of its implementation by Important Notice.

[10] This functionality is anticipated to be rolled out in early March 2011.

Transactions eligible for submission will have to have a valid CUSIP or ISIN and be denominated in U.S. Dollars or such other currencies as NSCC may designate from time to time. NSCC may determine from time to time and shall announce by Important Notice which items are eligible for submission to OW. Initially, government, mortgage-backed, and foreign securities will all specifically not be eligible. Further, cash trades will be processed by OW only after settlement failure of these trades.

OW Comparison and Trade Resolution Procedures

As approved, the rule change will provide that once a party enters the required transaction information,[11] the contraparty will receive an advisory to which it must respond by submitting identical transaction details to facilitate a compared obligation or by submitting a DK.[12] If a member does not act on an advisory submitted against it by the close of business on the day after submission, NSCC may impose a fee upon the member. If the deliverer and receiver submit trade data that matches in all required respects, the trade will be deemed compared.[13] NSCC may permit uncompared trade details to be modified or cancelled by the submitter on the submission date through the use of the appropriate instruction.[14] Upon comparison, NSCC may permit obligations to be cancelled if both receiver and deliverer agree by submitting a cancel request or if one party accepts the other party's cancel request. Each OW Obligation will receive an "OW Control Number" to facilitate tracking the obligation through its settlement, cancellation, or closure.

NSCC will have no responsibility for determining whether any trade submission is duplicative of an earlier trade submission. All trade submissions will be treated as separate submissions. NSCC may delete trade input which is not matched by such time frames as it determines from time to time.

Maintenance and Tracking

As a result of the rule change, the OW service will permit members to track each OW Obligation for the life of the obligation until it has been (i) settled, (ii) cancelled by the members that are the parties to the obligation, or (iii) otherwise closed in the OW Service by NSCC pursuant to NSCC Rules (*e.g.,* when the obligation becomes CNS-eligible and is sent to CNS for settlement). NSCC may adjust any compared OW Obligation with respect to certain mandatory reorganization events, which will initially be limited to forward splits, name changes, redemptions, mergers (both cash and stock), and full calls with respect to bonds. In the case of such a mandatory reorganization, at such time on or after the effective date of the reorganization as NSCC shall determine and to the extent NSCC has the relevant information, the affected OW Obligation may be adjusted in accordance with the terms of the reorganization event. With respect to name changes and forward splits, OW positions in the subject security will be converted into the equivalent positions of the new securities, cash, or both and a new obligation will be created automatically as part of the processing in the OW. Any cash component associated with a mandatory reorganization will be included as part of the member's daily money settlement with NSCC.[15]

Unless otherwise excluded by a member, all CNS-eligible OW Obligations that reach the status of settlement date minus one ("SD–1") or that have reached or passed their scheduled settlement date, may be forwarded to CNS by NSCC on a daily basis.[16] However, the settlement of any such item forwarded to CNS will be guaranteed only to the extent that the member pays its full settlement obligation on the date the item is scheduled to settle in CNS. An item forwarded to CNS from the OW may be exited from CNS to the extent the member fails to complete its settlement obligation. If NSCC exits an item, any credits received by a member arising from the corresponding payment obligation shall be reversed, and settlement of the item shall be effected between the receiving and delivering member outside the facilities of NSCC.

OW Obligations for which deliveries are made through The Depository Trust Company ("DTC") through either The New York Window ("NYW") or electronic book-entry deliver order will be updated to indicate that they have settled in accordance with proper instructions from DTC or the member, respectively. In order to give effect to such an update, members must provide DTC with instructions in accordance with DTC's procedures and must include the OW Control Number. In the event of a partial delivery through DTC, NSCC will update the records for the respective OW Obligation accordingly based on information received either from DTC or the member's update to their own OW Obligation records. Other items will be recorded as settled upon the submission of appropriate instructions by the counterparties. Obligations that have been reflected in the OW as settled may be reopened (either partially or fully) as a result of a delivery reclaim message sent by either party to the obligation to OW. Updates to reflect reclaims of settled transactions will be made once one party enters details of the original transaction and the original transaction's OW Control Number.[17] Once these details are submitted, an advisory of the reclaim will be sent to the contraparty that must then submit either identical transaction details to facilitate the reclaim and reopening of the obligation in OW or notification that it does not accept the reclaim details entered by the initiating party. Updates for reclaims may only be submitted to the OW for a period of two business days following the actual settlement date of the relevant obligation. If the reclaim message is not accepted by the contraparty, it will be deleted from the OW, and the parties will need to generate a new reclaim message in OW. If the original obligation has been settled for longer than two business days, any reclaim message will be rejected.

Pursuant to the approved rule change, if NSCC ceases to act for a member, all open activity relating to that member

[11] Data required for a valid submission will include security identification, quantity to which party is deliverer or receiver, contrabroker, deliverer's final money, settlement date, market participation identification (MPID) (if applicable), Member's unique reference number ("x-ref") whether a transaction should be excluded from CNS processing, and other identifying details as NSCC may require or permit.

[12] Obligations will be able to be submitted to the OW in real-time. Required matching criteria will include the data required for a valid submission (*i.e.,* specific criteria listed in the immediately preceding footnote except for the x-ref), and other identifying details as NSCC may require or permit. Any submission of a DK must include the applicable reason code pertaining to the Member's disagreement with the transaction.

[13] For purposes of deeming a trade compared, NSCC will use an initial money tolerance of $5 per million. The amount of the money tolerance may change from time to time pursuant to the filing of a proposed rule change by NSCC.

[14] Modification of transaction details will result in the cancellation of the existing entry and the opening of a new submission. Transaction details that have been DK'd by a contraparty will be deleted from processing in accordance with time frames specified by NSCC from time to time. Initially, such transaction details will be deleted on the fifth business day following submission of the DK by the contraparty.

[15] In the event that NSCC ceases to act for a member pursuant to Rule 18, NSCC will reverse credits and debits relating to such a cash adjustment.

[16] This functionality is expected to be rolled out by March 2011 or on a date no less than 10 business days following announcement of its implementation by Important Notice.

[17] Transaction details required will be identical to those required when comparing an obligation. *Supra* note 7.

will be deleted from the OW. However, the reports relating to such activity will be maintained in accordance with NSCC's record retention requirements.

Modified RECAPS Process

Pursuant to the rule change, the existing RECAPS process will continue to function but in a modified form.[18] Upon implementation of OW, the RECAPS process will be incorporated into OW and will require one day to complete. It is anticipated that the process will occur more frequently than the current quarterly schedule.[19]

On a day specified by NSCC, each OW Obligation eligible for RECAPS [20] will be re-priced, if appropriate,[21] renetted and allotted, if appropriate, the settlement date will be updated to the next business date, and a new OW Obligation will be opened. Securities that are not CNS-eligible or that are designated as trade-for-trade will not be netted and allotted. Obligations eligible for RECAPS in the OW can be excluded from the RECAPS process if so designated by the member.

All new obligations arising from the RECAPS process will be tracked and processed in accordance with the OW procedures described above. If a fail was open over an interest payment date, the parties to the trade will be required to settle that interest payment outside of NSCC. Any net cash adjustments resulting from the RECAPS process will be sent to NSCC as they are under the current process.

Reporting

Under the new rule, each member will receive real-time updates regarding its OW activity. In addition, NSCC will make available to each member an end-of-day report that reflects all end-of-day positions of such member in OW, which may be accessed by members through NSCC's systems. Accordingly, NSCC will discontinue issuance of all RECAPS reports (*e.g.,* RECAPS Contracts/ Supplemental Contracts and RECAPS Compared Trade Summaries).

The rule change also creates a new Rule 51 (Obligation Warehouse) and Procedure IIA (Obligation Warehouse) to reflect the changes and enhancements as described above. Rule 51 provides: (i) A general description of the OW service, (ii) a provision relating to the settlement of OW Obligations and the non-guaranteed nature of the service, and (iii) a limitation of liability on the part of NSCC with respect to obligations processed through the OW. Furthermore, the provisions of Procedure IIA will supersede those set forth in Procedure II, Section F (RECAPS), and thus Section F will be deleted.

In addition, NSCC will make conforming changes to:

a. Rule 1 (Definitions) to add a definition for "Obligation Warehouse" and "OW Obligation";

b. Rule 7 (Comparison and Trade Recording Operation) to remove language from the rule relating to submission of data to NSCC for reconfirmation and repricing of trade data with respect to transactions already compared through the facilities of NSCC or other facilities, as this service will now occur pursuant to Rule 51 and Procedure XVII;

c. Rule 11 (CNS System) to provide that obligations arising from Special Trades will be automatically entered into the OW;

d. Rule 18 (Procedures for When NSCC Ceases to Act) to reflect that (i) the OW Obligations that have been forwarded to CNS for settlement relating to a member for which NSCC has ceased to act will be removed from the CNS Accounting Operation and that any outstanding OW Obligations of the member will be removed from the OW service and (ii) NSCC will reverse any cash adjustments that were forwarded to settlement relating to the OW activity of a member for which NSCC has ceased to act;

e. Rule 50 (Automated Customer Account Transfer Service) to reflect that non-CNS ACATS items (as well as CNS-eligible items designated to be delivered ex-CNS) will be automatically entered into the OW;

f. Procedure V (Balance Order Accounting Operation) to reflect that Balance Orders will be automatically entered into the OW; and

g. Procedure VII (CNS Accounting Operation) to reflect (i) the addition of CNS-eligible OW activity to the CNS Miscellaneous Activity Report and (ii) securities removed from CNS that result in CNS Receive or Deliver Instructions will be entered into the Obligation Warehouse service.

Pilot and Participant Testing

NSCC implemented a pilot program of the OW process in early February 2010 for firms that had completed systems changes necessary to participate in the process. This pilot program ended at the beginning of June 2010 as additional discussions ensued between NSCC and its participant members regarding the additional functionalities, which are described in this filing, sought to be included within the service. Prior to implementation of OW, a participating member testing period will take place between November 2010 and January 2011. An industry-wide test of the OW RECAPS process will be scheduled for some time in the first quarter of 2011.

Implementation Time Frame

NSCC will implement the changes set forth in this filing for all members during the first quarter of 2011 with the first settlement date expected to be on January 24, 2011. Mandatory reorganization events are anticipated to be applied to OW Obligations shortly after February 4, 2011, on a date no less than 10 business days following announcement of the implementation by Important Notice. Similarly, at the request of the industry, the functionality providing for OW Obligations to be reviewed for CNS-eligiblility and if eligible sent to CNS will be implemented several weeks after the initial launch to give members time to familiarize themselves with the OW settlement tracking functionality. Accordingly, after March 4, 2011, or on a date no less than 10 business days following announcement of its implementation by Important Notice obligations in the OW will be reviewed for CNS-eligibility and if eligible will be closed and sent to CNS. The first RECAPS process in the OW will be run in late March or early April 2011. NSCC members will be advised of the implementation dates through issuance of NSCC's Important Notices.[22]

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and

[18] It is expected that the first RECAPS process in the OW will run in late March or early April 2011.

[19] Upon implementation of the changes described herein, NSCC anticipates operating the RECAPS process on a monthly cycle. Members will be notified of changes in the processing cycle, if any, by an NSCC Important Notice.

[20] Obligations that are matched and have a settlement date of at least two days prior to the date on which the RECAPS process commences will be considered for inclusion in the RECAPS process. Fail items not already in the OW but eligible for RECAPS processing must be submitted to OW by the member prior to RECAPS processing.

[21] In the event that the current market price for a security is not available, the obligation will be priced at the amount at which the obligation was previously matched.

[22] The dates set forth in this section are the dates NSCC anticipates taking action. As stated above, NSCC will keep its members informed of actual implementation and action dates by Important Notice.

settlement of securities transactions.[23] With the rule change modifying and enhancing the RECAPS to establish the OW service, NSCC will provide for greater efficiency and transparency with respect to securities transactions obligations processed through the OW. Furthermore, the modifications and enhancements will allow NSCC to improve its service by providing prompt and automated confirmation, comparison, and tracking of fail transactions.[24]

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NSCC's obligation under Section 17A of the Exchange Act, as amended, and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2010–11) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32730 Filed 12–28–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63604; File No. SR–NSCC–2010–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Insurance and Retirement Processing Services To Incorporate a New Analytics Reporting Service

December 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 10, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

NSCC is proposing to expand its Insurance and Retirement Processing Service ("IPS") by providing a new Analytics Reporting Service in order to provide greater transparency to the insurance market.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background

Currently, service providers that make insurance information available to the insurance industry generally utilize a combination of publicly accessible financial information, responses provided by market participants to optional surveys, and proprietary analytical tools. These services also rank the various market participants and products in the insurance market to provide relative rankings by revenue or other criteria. Reliance on survey results and the aggregation and analysis of those results often makes the information several months old by the time it is distributed to subscribers.

2. Proposed Amendments

NSCC proposes to add a new Section 12 to NSCC Rule 57 to provide an Analytics Reporting Service.[2] The Analytics Reporting Service would use actual transaction information currently used by NSCC in processing IPS transactions rather than survey results. NSCC believes that this would allow IPS to provide more efficient, cost-effective, and timely benchmarking and other market information about the insurance market. The Analytics Reporting Service would assist NSCC Members and Limited Members in better understanding their business and the broader market for insurance products; would help them to better understand investor needs; would support the efficient development of products that meet investor needs; and would assist them in making decisions related to sales, marketing, and product development.

3. Overview

The Analytics Reporting Service would provide NSCC Members and Limited Members with the ability to perform market analysis based on IPS data. This market analysis (commonly referred to as "benchmarking") would allow users of this service to obtain and compare aggregated data from different perspectives including, but not limited to, geographic location, type of transaction, and other criteria that NSCC and the NSCC Members and Limited Members determine to be most useful. The benchmarking portion of the service would provide information on an aggregate basis and would not reveal the confidential or proprietary information of any NSCC Member or Limited Member. The service would permit NSCC Members and Limited Members to monitor and to analyze their business through benchmarking relative performance by comparing their own transactional information against the overall market's and by conducting market research and analyzing market trends.

Additionally, NSCC would provide information that attributes aggregated transaction information to specific NSCC Members and Limited Members for the purposes of providing a relative ranking of products and market participants (*i.e.,* league tables). This aspect of the Analytics Reporting Service would allow NSCC Members and Limited Members to conduct peer analysis and to understand their performance relative to other NSCC Members or Limited Members. Although service providers already provide league tables on the basis of surveys and other tools, this information may be considered confidential or proprietary information by NSCC or the individual NSCC Members or Limited Members to which it pertains.

NSCC would offer the Analytics Reporting Service through a proprietary online service.

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[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The text of proposed new Section 12 to NSCC Rule 57 can be viewed at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-18.pdf.*

4. NSCC's Right to Release Clearing Data

"Clearing Data" as defined in NSCC's Rule 49 includes data received by NSCC for inclusion in the clearance and settlement process of NSCC or such data, reports, or summaries produced as a result of NSCC processing such transaction data. Rule 49 generally prohibits the release of Clearing Data relating to a transaction to parties other than the NSCC Members or Limited Members that are involved in the transaction.

The use of IPS-related Clearing Data as part of the Analytics Reporting Service for purposes of providing benchmarking data does not violate this general prohibition of Rule 49. Rule 49 explicitly permits NSCC to utilize Clearing Data in a form that prevents the disclosure of proprietary or confidential financial, operational, or trading data of a particular NSCC Member or Limited Member. Thus, Rule 49 permits the sharing of cleansed or aggregate reporting of transaction information or Clearing Data. The Analytics Reporting Service would utilize Clearing Data for benchmarking purposes in a manner that is consistent with existing NSCC rules because it would provide only cleansed or aggregated reporting data that would not reveal the proprietary or confidential information of any NSCC Member or Limited Member.

Because the league tables that provide a relative ranking of NSCC Members and Limited Members and their products may be considered by some NSCC Members and Limited Members to be the release of confidential or proprietary information, NSCC is providing notice of its intent to release this data in accordance with NSCC Rule 49(c). NSCC Rule 49(c) provides that an NSCC Member or Limited Member may request the release of any Clearing Data whose release is not otherwise permitted under Rule 49 either in writing or by written agreement. NSCC intends this proposed rule change and the addition of the Analytics Reporting Service to serve as the written agreement providing for the release of the Clearing Data under Rule 49(c). NSCC believes that this proposed rule change, the amendment to its rules, and NSCC's Important Notice to NSCC Members and Limited Members [3] (a notice issued to NSCC Members and Limited Members in relation to every rule filing submitted to the Commission by NSCC) provides NSCC Members and Limited Members with reasonable and sufficient notice of its intent to distribute cleansed and aggregated IPS related Clearing Data.

5. Right to Opt-Out

Due to potential concerns that the attribution of aggregated transactions to specific NSCC Members and Limited Members within league tables may potentially reveal confidential data, NSCC Members and Limited Members that utilize IPS ("IPS Members") would be able to request that NSCC not attribute and not include their respective transaction information with respect to league tables in the Analytics Reporting Service. That is, they may "opt-out." By opting-out, the IPS Member would prohibit NSCC from associating their transactions in any discernible manner (*e.g.,* listing the IPS Member in a league table). However, opting-out would not prohibit NSCC from including the information for purposes of describing the market in a particular geographic location or in accordance with other criteria that does not identify a specific IPS Member for purposes of benchmarking. This opt-out provision would provide an IPS Member with the ability to prevent disclosure of potentially confidential or proprietary information attributable to its activity, just as it may prevent the disclosure of its individual transactions. Yet, it would not prevent NSCC from providing the marketplace with useful information regarding the overall insurance market.

In order to opt-out of the Analytics Reporting Service prior to the service becoming available, IPS Members would have to notify NSCC in writing during the initial ninety (90) day opt-out period. NSCC would announce the beginning of this ninety (90) day period through an Important Notice. A new IPS Member would be allowed to opt-out by providing NSCC with written notice of their election to opt-out at any time prior to account activation. Once the Analytics Reporting Service commences to include the information of an IPS Member, the IPS Member would be allowed to opt-out by providing NSCC with thirty (30) days' written notice.

By opting-out, the IPS Member would authorize NSCC to disclose that the league tables and other information that compares IPS Members and their insurance products do not include information from that IPS Member. This would clarify the content of the benchmarking data that NSCC would provide.

Finally, an IPS Member that opts-out would forfeit any portion of NSCC's annual refund, if any, that is directly attributable to the revenue generated by the Analytics Reporting Service.

6. Prohibiting Disclosures Prior to Earnings Reports

The Analytics Reporting Service would allow IPS Members to prevent the disclosure or attribution of transactions to a specific IPS Member in order to permit compliance with the laws and regulations governing disclosure of such information prior to earnings reporting. Based on discussions with IPS Members, NSCC has established a policy that applies an embargo period of sixty (60) days after the end of the first, second, and third calendar quarters and ninety (90) days after the end of the calendar year.

7. Fees

NSCC intends to propose fees for the Analytics Reporting Service in a subsequent proposed rule filing. Until then, NSCC Members and Limited Members would be able to use the Analytics Reporting Service without any additional charge to the current Financial Activity Reporting fees. Parties that are not NSCC Members or Limited Members would not be able to use the Analytics Reporting Service until appropriate fees for non-members have become effective.

NSCC states that the proposed change will permit NSCC Members and Limited Members to enhance their monitoring and analysis of their respective businesses. NSCC further states that the proposed rule change is consistent with the requirements set forth under Section 17A of the Act [4] that require the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] NSCC Important Notices are notices issued to NSCC Members and Limited Members in relation to, among other things, every rule filing submitted to the Commission by NSCC.

[4] 15 U.S.C. 78q–1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited and does not intend to solicit comments regarding this proposed rule change. NSCC has not received any unsolicited written comments from members or other interested parties. However, NSCC has worked with NSCC Members and Limited Members in designing this service.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an e-mail to *rule-comment@sec.gov.* Please include File No. SR–NSCC–2010–18 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File No. SR–NSCC–2010–18. 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 NSCC's principal office and NSCC's Web site (*http://www.dtcc.com/legal/rule_filings/nscc/2010.php*). 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–NSCC–2010–18 and should be submitted by January 19, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32787 Filed 12–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63601; File No. SR–NYSEAmex–2010–124]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Extending the Operation of the Pilot Program That Allows Nasdaq Stock Market Securities to be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges

December 22, 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 December 20, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 500 to extend the operation of the pilot program that allows Nasdaq Stock Market ("Nasdaq") securities to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot is currently scheduled to expire on January 31, 2011; the Exchange proposes to extend it until the earlier of Securities and Exchange Commission ("SEC" or "Commission") approval to make such pilot permanent or August 1, 2011. The text of the proposed rule change is available at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex Equities Rules 500–525, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges ("UTP Pilot Program").[3] The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on January 31, 2011, until the earlier of

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31) (Notice of Filing of Amendment Nos. 2 and 3, and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Adopt as a Pilot Program a New Rule Series for the Trading of Securities Listed on the Nasdaq Stock Market Pursuant to Unlisted Trading Privileges). *See also* Securities Exchange Act Release No. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR–NYSEAmex–2010–89) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program That Allows Nasdaq Stock Market Securities To Be Traded on the Exchange Pursuant to UTP).

Commission approval to make such pilot permanent or August 1, 2011.

The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an "eligible security" under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended ("UTP Plan"),[4] and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the "Act"),[5] (collectively, "Nasdaq Securities").[6]

The Exchange notes that its New Market Model Pilot ("NMM Pilot"), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker ("DMM"),[7] is also scheduled to end on January 31, 2011.[8] The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act[9] and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.[10] Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.[11] The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or August 1, 2011.[12]

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from January 31, 2011 until the earlier of Commission approval to make such pilots permanent or August 1, 2011, will provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to encourage the additional utilization of, and interaction with, the NYSE Amex Equities market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for Nasdaq Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal is consistent with (i) Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove 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; (ii) Section 11A(a)(1) of the Act,[15] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,[16] which governs the trading of securities pursuant to UTP consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities. Under the UTP Pilot Program Nasdaq Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. NYSE Amex made certain minor modifications to the operation of these rules, and added certain new rules, to accommodate the trading of Nasdaq Securities on a UTP basis; the Commission also approved all of these modifications and additions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

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

[4] *See* Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (Notice of filing and immediate effectiveness of Amendment No. 20 to the UTP Plan). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 2091 (April 27, 2007) (S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] 15 U.S.C. 78l.

[6] "Nasdaq Securities" is included within the definition of "security" as that term is used in the NYSE Amex Equities Rules. *See* NYSE Amex Equities Rule 3. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an "issued," "when issued," or "when distributed" basis. *See* NYSE Amex Equities Rule 501.

[7] *See* NYSE Amex Equities Rule 103.

[8] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); and 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86).

[9] 15 U.S.C. 78.

[10] *See supra* note 1, at 41271.

[11] *Id.*

[12] *See* SR–NYSEAmex–2010–122.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78l(f).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–124. 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–NYSEAmex–2010–124 and should be submitted on or before January 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32734 Filed 12–28–10; 8:45 am]

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63599; File No. SR–MSRB–2010–16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Amendments to Rule G–5, on Disciplinary Actions by Appropriate Regulatory Agencies, Remedial Notices by Registered Securities Associations; and Rule G–17, on Conduct of Municipal Securities Activities

December 22, 2010.

I. Introduction

On November 1, 2010, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change which consists of amendments to Rule G–5, on disciplinary actions by appropriate regulatory agencies, and Rule G–17, the Board's basic fair practice rule, to apply the rules to municipal advisors. The proposed rule change was published for comment in the **Federal Register** on November 18, 2010.[3] The Commission received one comment letter about the proposed rule change which supported the proposed rule change.[4]

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Rule G–5 currently provides that brokers, dealers, and municipal securities dealers ("dealers") may not engage in municipal securities activities in contravention of restrictions imposed on them by the Commission, a registered securities association, or another appropriate regulatory agency. The purpose of the portion of the proposed rule change consisting of amendments to Rule G–5 are a) to remove a reference to an outdated National Association of Securities Dealers ("NASD") [5] rule and b) to provide that municipal advisors and their associated persons may not engage in the municipal advisory activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act in contravention of restrictions imposed upon them by the Commission.

Rule G–17 currently provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. The purpose of the portion of the proposed rule change consisting of amendments to Rule G–17 is to apply the MSRB's core fair dealing rule to municipal advisors in the same manner that it currently applies to dealers.

A more complete description of the proposal is contained in the Commission's Notice.

The proposed rule change shall be effective upon Commission approval.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB [6] and, in particular, the requirements of Section 15B(b)(2) of the Exchange Act [7] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the MSRB's rules be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons and the public interest.[8] Section 15B(b)(2)(L) of the Exchange Act requires, among other things, that the rules of the MSRB not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63309 (November 12, 2010), 75 FR 70756 (the "Commission's Notice").

[4] *See* letter from the National Association of Independent Public Finance Advisors, dated December 9, 2010.

[5] In 2007, the NASD merged with the New York Stock Exchange's regulation committee to form the Financial Industry Regulatory Authority, or FINRA. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–4(b)(2).

[8] 15 U.S.C. 78*o*–4(b)(2)(C).

persons, provided that there is robust protection of investors against fraud.[9]

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, because it provides that: (i) municipal advisors shall deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice and (ii) municipal advisors and their associated persons shall not conduct municipal advisory activities in contravention of restrictions imposed upon them by the Commission. Such restrictions are, amongst other things, consistent with Section 15B(b)(2)(C) of the Exchange Act because they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The Commission further believes that the proposed rule change is consistent with Section 15B(b)(2)(L) of the Exchange Act because the proposed rule change does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and the proposed rule change is necessary for the robust protection of investors against fraud as well as the protection of municipal entities and obligated persons. Many municipal advisors play a key role in the structuring of offerings of municipal securities and the preparation of offering documents used to market those securities to investors. In some cases, they advise on the appropriateness of municipal financial products, including municipal derivatives, entered into by municipal entities, the effectiveness of which may have a substantial impact on the finances of those municipal entities. In other cases, they solicit municipal entities and obligated persons for investment advisory business with respect to funds held by or on behalf of such municipal entity or obligated person which, if not conducted according to the highest standards, may have a substantial effect on the finances of the municipal entities and obligated persons that control those funds. Investors, therefore, have a substantial interest in municipal advisors conducting their municipal advisory activities fairly, not engaging in fraudulent conduct, and not engaging in municipal advisory activities contrary to disciplinary actions imposed by the Commission.

The proposal will become effective upon Commission approval.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[10] that the proposed rule change (SR–MSRB–2010–16), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32732 Filed 12–28–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78*o*–4(b)(2)(L).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63595; File No. SR–Phlx–2010–179]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Cancellation Fee

December 22, 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 December 16, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to eliminate the Cancellation Fee for electronically delivered customer orders from Section II, Equity Options Fees, of the Fee Schedule.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades occurring on and after January 3, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule, specifically Section II, Equity Options Fees, to eliminate the Cancellation Fee for electronically delivered customer orders.

Currently, the Exchange assesses a Cancellation Fee on electronically delivered Customer order for symbols other than the select symbols in Section I of the Fee Schedule [3] and Professional All-or-None ("AON") orders that are submitted by a member. The Exchange assesses $2.10 per order for each cancelled electronically delivered customer order and $1.10 per order for each cancelled electronically delivered AON order submitted by a Professional in excess of the number of AON orders submitted by a Professional executed on the Exchange by a member organization in a given month.[4] A Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered customer or AON orders submitted by a Professional, respectively, are cancelled.[5]

The Exchange is proposing to amend the Cancellation Fee in Section II so that the Cancellation Fee would not apply to

[3] Section I of the Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols contains a list of symbols which apply to Section I of the Fee Schedule ("Select Symbols").

[4] All customer or AON orders submitted by a Professional from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period are aggregated and counted as one executed customer or AON option order submitted by a Professional.

[5] A Cancellation Fee does not apply to pre-market cancellations, Complex Orders that are submitted electronically, unexecuted Immediate-or-Cancel ("IOC") customer orders or cancelled customer orders that improved the Exchange's prevailing bid or offer ("PBBO") market at the time the customer orders were received by the Exchange.

customer orders. The Cancellation Fee would continue to apply to Professional AON orders in all symbols, both Select Symbols and non-Select Symbols, and it would continue to not apply to any other type of Professional order.

The Exchange recently amended the Fee Schedule to remove the Cancellation Fee for customer orders in the Select Symbols.[6] The Exchange believes the Cancellation Fee is no longer required for customers to cover the cost of system utilization. In addition, the requirement to mark Professional orders has also alleviated some of the capacity issues that resulted from customer cancel orders.[7] The Exchange believes that removing the Cancellation Fee for customer orders is appropriate because the concerns with system congestion have been alleviated by the requirement to mark Professional orders.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades occurring on or after January 3, 2011.

2. *Statutory Basis*

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposed amendments to the customer Cancellation Fee are reasonable because they are no longer required to recover costs associated with excessive order cancellation activity. The Exchange believes that there should not be increased system congestion as a result of removing the customer Cancellation Fee.

The Exchange believes that the Cancellation Fee is still necessary with respect to Professional AON orders because those orders are treated as customer orders for purposes of priority. Member organizations must indicate whether orders are for Professionals. The Exchange believes that this requirement to mark an order as Professional has shifted the source of the system congestion from customer orders to Professional AON orders. Continuing to assess a Cancellation Fee for Professional AON orders in all symbols should continue to ease system congestion and allow the Exchange to recover costs associated with excessive order cancellation activity.

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[10] and paragraph (f)(2) of Rule 19b–4[11] thereunder. 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–2010–179 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–010–179. 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,[12] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2010–179 and should be submitted on or January 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 63252 (November 5, 2010), 75 FR 69486 (November 12, 2010) (SR–Phlx–2010–150).

[7] *See* Securities Exchange Act Release No. 61802 (April 5, 2010), 75 FR 17193 (March 30, 2010) (SR–Phlx–2010–05).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4(f)(2).

[12] The text of the proposed rule change is available on Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov,* at Phlx, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed Routine Use

AGENCY: Social Security Administration (SSA).

ACTION: Proposed routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to add a new routine use to our system of records entitled *Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058* (the Enumeration System). The routine

use to the Enumeration System will allow us, upon request of the Department of Health and Human Services (HHS), Department of Agriculture's National Finance Center (NFC), Office of Personnel Management (OPM), and the States, or the States' respective contractors or agents that administer the Pre-existing Condition Insurance Plan (PCIP) to verify the name, SSN, and date of birth, and confirm whether citizenship allegations match information in our records for the purposes of determining eligibility for PCIP.

We discuss the routine use in greater detail in the **SUPPLEMENTARY INFORMATION** section below. We invite public comment on this proposal.

DATES: We filed a report of the routine use with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on *December 17, 2010.* The routine use will become effective *January 26, 2011* unless we receive comments before that date that require further consideration.

ADDRESSES: Interested persons may comment on this publication by writing to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401 or through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* All comments we receive will be available for public inspection at the above address and will be posted to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anthony Tookes, Management Analyst, Disclosure Policy Development and Services Division 2, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–0097, e-mail: *anthony.tookes@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Routine Use

A. Disclosure of Citizenship Data for the Pre-existing Condition Insurance Plan

On March 23, 2010, President Obama signed into law the Affordable Care Act of 2010 (Pub. L. 111–148), which requires HHS to establish a PCIP that will operate and be in effect from June 21, 2010 until January 1, 2014, when each State will have established an American Health Benefit Exchange. The PCIP is a temporary health insurance program that will provide immediate access to insurance for uninsured persons with a pre-existing condition. HHS is responsible for overall administration of the PCIP, but may carry out the program through contracts with the States and nonprofit entities. For those States that have opted not to contract with HHS to establish their own program under the PCIP, HHS has delegated PCIP eligibility determination authority to NFC and OPM.

Under the Affordable Care Act, we must verify certain information upon request from HHS, States, or their respective contractors or agents. We will verify each applicant's name, SSN, and date of birth, and confirm whether allegations of citizenship match information in our records. HHS, NFC, OPM, and the States, or the States' respective contractors or agents administering the PCIP, are responsible for resolving any information discrepancies with the applicant. If there is a discrepancy with the allegation of citizenship in our records, NFC, the States, or the States' respective contractors or agents, will notify the applicant or HHS of the discrepancy. If we cannot confirm citizenship, HHS, NFC, the States, or the States' respective contractors or agents, will verify citizenship with the Department of Homeland Security.

II. Proposed New Routine Use

A. Pre-existing Condition Insurance Plan

The Privacy Act requires that agencies publish in the **Federal Register**, notification of "each routine use of the records contained in the system, including the categories of users and the purpose of such use." 5 U.S.C. 552a(e)(4)(D). This new routine use, numbered 44, for the Enumeration System, will allow disclosure to HHS, NFC, OPM, and the States, or the States' contractors or agents charged with administering the PCIP. The routine use reads as follows:

To the Department of Health and Human Services, Department of Agriculture's National Finance Center, Office of Personnel Management, and the States or the States' respective contractors or agents charged with administering the Pre-existing Condition Insurance Program (PCIP), to verify personal identification data (*i.e.,* name, SSN, and date of birth) and to confirm citizenship status information in our records to assist these entities in determining applicants' entitlement to benefits under the PCIP.

III. Compatibility of Routine Use

We may disclose information when the purpose is compatible with the purpose for which we collected the information and when re-disclosure is supported by published routine uses (20 CFR 401.150). HHS, NFC, OPM, and the States or the States' respective contractors or agents will use the information to assist them in determining new applicants' entitlement to the benefits under the PCIP. We will assist these entities in implementing the PCIP, in order to detect and deter conduct that violates section 208(a)(7) of the Social Security Act, and support the effective and efficient administration of PCIP by providing verification services and citizenship status information to these entities and their contractors or agents via this routine use. For these reasons, we find that providing SSN verification and citizenship confirmation services to HHS, NFC, OPM, States, or their respective contractors or agents that administer the PCIP, satifies both the statutory and regulatory compatibility requirements.

IV. Effect of the Routine Use on the Rights of Persons

With this routine use, we can verify identification data for HHS, NFC, OPM, the States, or the States' respective contractors or agents. They will use the data to assist them in determining applicants' entitlement to benefits provided by PCIP. We will adhere to all applicable statutory requirements for disclosure, including those under the Social Security Act and the Privacy Act. We will disclose SSN verification information, including confirming citizenship status information in our records, to HHS, NFC, OPM, the States, or the States' respective contractors or agents, under written agreements that stipulate that they will collect, verify, and re-disclose SSNs and related data only as provided for by Federal law. We will also safeguard from unauthorized access the data we receive from these entities. Thus, we do not anticipate that the routine use will have any unwarranted adverse effect on the rights of persons about whom we will disclose information.

Dated: December 14, 2010.

Michael J. Astrue,

Commissioner.

Social Security Administration

Notice of Proposed New Routine Use; Required by the Privacy Act of 1974, as Amended

System Number: 60–0058

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, Social Security Administration (SSA).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

SSA, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF PERSONS COVERED BY THE SYSTEM:

This system contains a record of each person who has applied for, and to whom we have assigned, a Social Security number (SSN). This system also contains records of each person who applied for an SSN, but to whom we did not assign one, for one of the following reasons: (1) His or her application was supported by documents that we suspect may be fraudulent and we are verifying the documents with the issuing agency; (2) we have determined the person submitted fraudulent documents; (3) we do not suspect fraud, but we need to further verify information the person submitted or we need additional supporting documents; or (4) we have not yet completed processing the application.

CATEGORIES OF RECORDS IN THE SYSTEM:

We collect applications for SSNs. This system contains all of the information we received on the applications for SSNs (*e.g.,* name, date and place of birth, sex, both parents' names, and race/ethnicity data). If the application for an SSN is for a person under the age of 18, we also maintain the SSNs of the parents. The system also contains:

- Changes in the information on the applications the SSN holders submit;
- Information from applications supported by evidence we suspect or determine to be fraudulent, along with the mailing addresses of the persons who filed such applications and descriptions of the documentation they submitted;
- Cross-references when multiple numbers have been issued to the same person;
- A form code that identifies the Form SS–5 (Application for a Social Security Card Number) as the application the person used for the initial issuance of an SSN, or for changing the identifying information (*e.g.,* a code indicating original issuance of the SSN, or that we assigned the person's SSN through our enumeration at birth program);
- A citizenship code that identifies the number holder's status as a U.S. citizen or the work authorization of a non-citizen;
- A special indicator code that identifies types of questionable data or special circumstances concerning an application for an SSN (*e.g.,* false identity; illegal alien; scrambled earnings);
- An indication that an SSN was assigned based on harassment, abuse, or life endangerment; and
- An indication that a person has filed a benefit claim under a particular SSN.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act (42 U.S.C. 405(a) and 405(c)(2)).

PURPOSE:

We use information in this system to assign SSNs and for a number of administrative purposes:

- For various Old Age, Survivors, and Disability Insurance, Supplemental Security Income, and Medicare/Medicaid claims purposes, including using the SSN itself as a case control number, as a secondary beneficiary cross-reference control number for enforcement purposes, for verification of claimant identity factors, and for other claims purposes related to establishing benefit entitlement;
- To prevent the processing of an SSN card application for a person whose application we identified was supported by evidence that either:
  - We suspect may be fraudulent and we are verifying evidence; or
  - We determined to be fraudulent information.

We alert our offices when an applicant who attempts to obtain an SSN card visits other offices to find one that might unknowingly accept fraudulent documentation;

- As a basic control for retained earnings information;
- As a basic control and data source to prevent us from issuing multiple SSNs;
- As a means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases; and
- For statistical studies.

The information also is provided to:

- Our Office of the Inspector General, Office of Audit, for auditing benefit payments under Social Security programs;
- The Department of Health and Human Services (DHHS), Office of Child Support Enforcement, for locating parents who owe child support;
- The National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- The DHHS Office of Refugee Resettlement for administering Cuban refugee assistance payments;
- The DHHS Centers for Medicare and Medicaid Services (CMS) for administering Titles XVIII and XIX claims;
- The Secretary of the Treasury for use in administering those provisions of the Internal Revenue Code of 1986 (IRC) that grant tax benefits based on support for or residence of children. The IRC provisions apply specifically to SSNs that parents provide to us on applications for persons who are not yet age 18.

ROUTINE USES OF RECORDS COVERED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use disclosures are as indicated below; however, we will not disclose any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code, unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To employers in order to complete their records for reporting wages to us pursuant to the Federal Insurance Contributions Act and section 218 of the Social Security Act.

2. To Federal, State, and local entities to assist them with administering income maintenance and health-maintenance programs, when a Federal statute authorizes them to use the SSN.

3. To the Department of Justice (DOJ), Federal Bureau of Investigation and United States Attorney's Offices, and to the Department of Homeland Security, United States Secret Service, for investigating and prosecuting violations of the Social Security Act.

4. To the Department of Homeland Security, United States Citizenship and Immigration Services, for identifying and locating aliens in the United States pursuant to requests received under section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

5. To a contractor for the purpose of collating, evaluating, analyzing,

aggregating, or otherwise refining records. We require the contractor to maintain Privacy Act safeguards with respect to such records.

6. To the Railroad Retirement Board to:

(a) Administer provisions of the Railroad Retirement and Social Security Act relating to railroad employment; and

(b) Administer the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its epidemiological research study of the long-term effects of low-level radiation exposure, as permitted by our regulations at 20 CFR 401.150(c).

8. To the Department of the Treasury for:

(a) Tax administration as defined in section 6103 of the IRC (26 U.S.C. 6103);

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks; and

(c) Administering those sections of the IRC that grant tax benefits based on support or residence of children. As required by section 1090(b) of the Taxpayer Relief Act of 1997, Public Law 105–34, this routine use applies specifically to the SSNs of parents shown on an application for an SSN for a person who has not yet attained age 18.

9. To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

10. To the Department of State for administering the Social Security Act in foreign countries through its facilities and services.

11. To the American Institute, a private corporation under contract to the Department of State, for administering the Social Security Act on Taiwan through facilities and services of that agency.

12. To the Department of Veterans Affairs (DVA), Regional Office, Manila, Philippines, for administering the Social Security Act in the Philippines and other parts of the Asia-Pacific region through facilities and services of the DVA, Manila.

13. To the Department of Labor for:

(a) Administering provisions of the Black Lung Benefits Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

14. To Department Veterans Affairs:

(a) To validate SSNs of compensation recipients/pensioners so that DVA can release accurate pension/compensation data to us for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for, or amount of DVA benefits, or verifying other information with respect thereto.

15. To Federal agencies that use the SSN as a numerical identifier in their recordkeeping systems for the purpose of validating SSNs.

16. To DOJ, a court, other tribunal, or another party before such court or tribunal when:

(a) SSA or any of our components; or

(b) Any SSA employee in his or her official capacity; or

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect the operations of SSA or any of our components, is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

17. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

18. To the Social Security agency of a foreign country to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Social Security Act.

19. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs those agencies use to administer cash or non-cash income maintenance programs or health maintenance programs, including programs under the Social Security Act.

20. To third party contacts (*e.g.,* State bureaus of vital statistics and the Department of Homeland Security) that issue documents to persons when the third party has, or is expected to have, information that will verify documents when we are unable to determine if such documents are authentic.

21. To DOJ, Criminal Division, Office of Special Investigations, upon receipt of a request for information pertaining to the identity and location of aliens for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

22. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97–86).

23. To contractors and other Federal agencies, as necessary, to assist us in efficiently administering our programs.

24. To organizations or agencies, such as prison systems, required by Federal law to furnish us with validated SSN information.

25. To the General Services Administration and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.

26. To DVA or third parties under contract to DVA to disclose SSNs and dates of birth for the purpose of conducting DVA medical research and epidemiological studies.

27. To the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), to disclose SSN information when OPM needs the information to administer its pension program for retired Federal Civil Service employees.

28. To the Department of Education, upon request, to verify SSNs that students provide to postsecondary educational institutions, as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

29. To student volunteers, persons working under a personal services contract, and others, when they need access to information in our records in order to perform their assigned agency duties.

30. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to ensure the safety of our employees and customers, the security of our workplace, and the operation of our facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

31. To recipients of erroneous Death Master File (DMF) information, to disclose corrections to information that resulted in erroneous inclusion of persons in the DMF.

32. To State vital records and statistics agencies, the SSNs of newborn children for administering public health and income maintenance programs, including conducting statistical studies and evaluation projects.

33. To State motor vehicle administration agencies (MVA), and to

State agencies charged with administering State identification card programs (ICP) for the public, to verify names, dates of birth, and Social Security numbers on those persons who apply for, or for whom the State issues, driver's licenses or State identification cards.

34. To entities conducting epidemiological or similar research projects, upon request, pursuant to section 1106(d) of the Social Security Act (42 U.S.C. 1306(d)), to disclose information as to whether a person is alive or deceased, provided that:

(a) We determine, in consultation with the Department of Health and Human Services, that the research may reasonably be expected to contribute to a national health interest;

(b) The requester agrees to reimburse us for the costs of providing the information; and

(c) The requester agrees to comply with any safeguards and limitations we specify regarding re-release or re-disclosure of the information.

35. To employers in connection with a pilot program, conducted with the Department of Homeland Security under 8 U.S.C. 1324a(d)(4), to test methods of verifying that persons are authorized to work in the United States. We will inform an employer participating in such pilot program that the identifying data (SSN, name, and date of birth) furnished by an employer concerning a particular employee match, or do not match, the data maintained in this system of records, and when there is such a match, that information in this system of records indicates that the employee is, or is not, a citizen of the United States.

36. To a State Bureau of Vital Statistics (BVS) that is authorized by States to issue electronic death reports when the State BVS requests that we verify the SSN of a person on whom the State will file an electronic death report after we verify the SSN.

37. To the Department of Defense (DOD) to disclose validated SSN information and citizenship status information for the purpose of assisting DOD in identifying those members of the Armed Forces and military enrollees who are aliens or non-citizen nationals who may qualify for expedited naturalization or citizenship processing. These disclosures will be made pursuant to requests made under section 329 of the Immigration and Nationality Act, 8 U.S.C. 1440, as executed by Executive Order 13269.

38. To a Federal, State, or congressional support agency (*e.g.,* Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits; in examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and, analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, but only after we:

(a) Determine that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determine that the purpose for which the proposed use is to be made:

i. Cannot reasonably be accomplished, unless the record is provided in a form that identifies persons; and

ii. Is of sufficient importance to warrant the effect on, or risk to, the privacy of the person by such limited additional exposure of the record;

iii. Has reasonable probability that the objective of the use would be accomplished;

iv. Is of importance to the Social Security program or Social Security beneficiaries; or

v. Is of importance to the Social Security program or Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

(c) Require the recipient of information to:

vi. Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by SSA's personnel, its agents, or by independent agents of the recipient agency of those safeguards;

vii. Remove or destroy the identifying information at the earliest time consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, for retaining such information;

viii. Make no further use of the records except:

(1) Under emergency circumstances affecting the health and safety of any person, following written authorization from us; or

(2) For disclosure to an identified person approved by us for the purpose of auditing the research project;

ix. Keep the data as a system of statistical records (a statistical record is one which is maintained only for statistical and research purposes, and which is not used to make any determination about a person);

(d) Secure a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

39. To State and Territory MVA officials (or agents or contractors on their behalf), and to State and Territory chief election officials to verify the accuracy of information the State agency provides with respect to applications for voter registration, when the applicant provides the last four digits of the SSN instead of a driver's license number.

40. To State and Territory MVA officials (or agents or contractors on their behalf), and to State and Territory chief election officials, under the provisions of section 205(r)(8) of the Social Security Act (42 U.S.C. 405(r)(8)), to verify the accuracy of information the State agency provides with respect to applications for voter registration for those persons who do not have a driver's license number:

(a) When the applicant provides the last four digits of the SSN, or

(b) When the applicant provides the full SSN, in accordance with section 7 of the Privacy Act (5 U.S.C. 552a note), as described in section 303(a)(5)(D) of the Help America Vote Act of 2002. (42 U.S.C. 15483(a)(5)(D))

41. To the Secretary of Health and Human Services, or to any State, any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if we disclosed records or information of such type under applicable rules, regulations, and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

42. To the appropriate Federal, State, and local agencies, entities, and persons when: (1) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we find, as a result of the suspected or confirmed compromise, a risk of harm to economic or property interests, risk of identity theft or fraud, or harm to the security or integrity of this system or our other systems or programs that rely upon the compromised information; and (3) we

determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

43. To State agencies charged with administering Medicaid and the Children's Health Insurance Program (CHIP) to verify personal identification data (*e.g.,* name, SSN, and date of birth) and to disclose citizenship status information to assist them in determining new applicants' entitlement to benefits provided by the CHIP.

44. To the Department of Health and Human Services, Department of Agriculture's National Finance Center, Office of Personnel Management, the States, or the States' respective contractors or agents charged with administering the Pre-existing Condition Insurance Program (PCIP) to verify personal identification data (*e.g.,* name, SSN, and date of birth) and to confirm citizenship status information in our records to assist these agencies with determining applicants' entitlement to benefits under PCIP.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in this system in paper form (Forms SS–5 (Application for a Social Security Card), and system generated forms); magnetic media (magnetic tape and disc with on-line access); in microfilm and microfiche form; and on electronic files (NUMIDENT and Alpha-Index).

RETRIEVABILITY:

We will retrieve records by both SSN and name. If we deny an application because the applicant submitted fraudulent evidence, or if we are verifying evidence we suspect to be fraudulent, we will retrieve records either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

SAFEGUARDS:

We have established safeguards for automated records in accordance with our Systems Security Handbook. These safeguards include maintaining the magnetic tapes and discs within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge we issue only to authorized personnel.

For computerized records, we or our contractors, including organizations administering our programs under contractual agreements, transmit information electronically between Central Office and Field Office locations. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Only authorized personnel who have a need for the records in the performance of their official duties may access microfilm, microfiche, and paper files.

We annually provide to all our employees and contractors appropriate security guidance and training that include reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

RETENTION AND DISPOSAL:

We retain most paper forms only until we film and verify them for accuracy. We then shred the paper records. We retain electronic and updated microfilm and microfiche records indefinitely. We update all tape, discs, microfilm, and microfiche files periodically. We erase out-of-date magnetic tapes and discs and we shred out-of-date microfiches.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Enumeration Verification and Death Alerts, Office of Earnings, Enumeration, and Administrative Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager at the above address and providing their name, SSN, or other information that may be in this system of records that will identify them. Persons requesting notification by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification of records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record about which notification is sought. If we determine that the identifying information the person provides by telephone is insufficient, we will require the person to submit a request in writing or in person. If a person requests information by telephone on behalf of another person, the subject person must be on the telephone with the requesting person and with us in the same phone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name), and ask for his or her consent to provide information to the requesting person. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Persons must also reasonably specify the record contents they are seeking. These procedures are in accordance with our regulations at 20 CFR 401.40(c).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Persons must also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

RECORD SOURCE CATEGORIES:

We obtain information in this system from SSN applicants (or persons acting on their behalf).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–32565 Filed 12–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7278]

Culturally Significant Objects Imported for Exhibition Determinations: "Central Nigeria Unmasked: Arts of the Benue River Valley"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Central Nigeria Unmasked: Arts of the Benue River Valley," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fowler Museum at UCLA, Los Angeles, California, from on or about February 13, 2011, until on or about July 24, 2011, the National Museum of African Art, Smithsonian Institution, Washington, DC, from on or about September 14, 2011, until on or about March 4, 2012, the Cantor Center for the Visual Arts, Stanford University, Palo Alto, California, from on or about May 16, 2012, until on or about September 2, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 21, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32880 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7281]

Culturally Significant Objects Imported for Exhibition Determinations: "Gauguin: Maker of Myth"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Gauguin: Maker of Myth" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about February 27, 2011, until on or about June 5, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 21, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32897 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7282]

Culturally Significant Objects Imported for Exhibition Determinations: "Muhammad Juki's Shahnamah of Firdausi"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Muhammad Juki's Shahnamah of Firdausi," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with a foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Asia Society, New York, NY, from on or about February 9, 2011, until on or about May 1, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 21, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32898 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7284]

Culturally Significant Objects Imported for Exhibition Determinations: "Guitar Heroes: Legendary Craftsmen From Italy to New York"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Guitar Heroes: Legendary Craftsmen from Italy to New York," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit

objects at the Metropolitan Museum of Art, New York, New York, from on or about February 9, 2011, until on or about July 4, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 21, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32896 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7283]

Culturally Significant Objects Imported for Exhibition Determinations: "Gifts of the Sultan: The Arts of Giving at the Islamic Courts"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Gifts of the Sultan: The Arts of Giving at the Islamic Courts" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about June 5, 2011, until on or about September 5, 2011; The Museum of Fine Arts, Houston, TX, from on or about October 23, 2011, until on or about January 15, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 21, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32894 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7279]

Culturally Significant Objects Imported for Exhibition Determinations: "Vishnu: Hinduism's Blue-Skinned Savior"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Vishnu: Hinduism's Blue-Skinned Savior," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Frist Center for the Visual Arts, Nashville, TN, from on or about February 20, 2011, until on or about May 29, 2011; at the Brooklyn Museum, Brooklyn, NY, from on or about June 24, 2011, until on or about October 2, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: December 15, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32890 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7277]

Culturally Significant Objects Imported for Exhibition Determinations: "The Orient Expressed: Japan's Influence on Western Art, 1854–1918"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "The Orient Expressed: Japan's Influence on Western Art, 1854–1918," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Mississippi Museum of Art, Jackson, Mississippi, from on or about February 19, 2011, until on or about July 17, 2011, the McNay Art Museum, San Antonio, Texas, from on or about October 5, 2011, until on or about January 15, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 21, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32882 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7280]

Culturally Significant Objects Imported for Exhibition Determinations: "Francis Alÿs: A Story of Deception"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Francis Alÿs," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY, from on or about May 8, 2011, until on or about August 1, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: December 21, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–32889 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7172]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct two open meetings at United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The first meeting will be held at 9:30 a.m., Wednesday, January 26, 2011, in conference room 6103. The primary purpose of this meeting is to prepare for the fifteenth session of the International Maritime Organization's (IMO) Subcommittee on Bulk Liquids and Gases (BLG 15) to be held at IMO Headquarters in London, United Kingdom, from February 7 to February 11, 2011.

The primary matters to be considered at the 26 January meeting in preparation for BLG 15 include:

— Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments;
— Application of the requirements for the carriage of bio-fuels and bio-fuel blends;
— Development of guidelines and other documents for uniform implementation of the 2004 BWM Convention;
— Development of provision for gas-fuelled ships;
— Casualty analysis;
—Consideration of IACS unified interpretations;
— Development of international measures for minimizing the transfer of invasive aquatic species through bio-fouling of ships;
— Revision of the IGC Code;
— Review of relevant non-mandatory instruments as a consequence of the amended MARPOL Annex VI and the NO_X Technical Code;
— Development of a Code for the transport and handling of limited amounts of hazardous and noxious liquid substances in bulk in offshore support vessels;
— Amendments to SOLAS to mandate enclosed space entry and rescue drills;
— Revision of the Recommendations for entering enclosed spaces aboard ships;
— Review of proposed amendments to chapter 14 of the FSS Code related to ships carrying liquid substances listed in the IBC Code

The second meeting will be held at 10 a.m. on Thursday, February 15, 2011 in Conference Room 05–1224 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the nineteenth Session of the International Maritime Organization's (IMO) Subcommittee on Flag State Implementation (FSI 19) to be held at the IMO Headquarters in London, United Kingdom, from February 21 to February 25, 2011.

The primary matters to be considered at the 15 February meeting in preparation for FSI 19 include:

— Adoption of the agenda
— Decisions of other IMO bodies
— Responsibilities of Governments and measures to encourage flag State compliance;
— Mandatory reports under International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
— Casualty statistics and investigations;
— Harmonization of port State control activities;
— Port State Control (PSC) Guidelines on seafarers' working hours and PSC guidelines in relation to the Maritime Labour Convention, 2006;
— Development of guidelines on port State control under the 2004 Ballast Water Management (BWM) Convention;
— Review of Guidelines for the inspection of anti-fouling systems on ships
— Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
— Review of the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC);
— Consideration of International Association of Classification Societies (IACS) unified interpretations;
— Review of the Code for the Implementation of Mandatory IMO Instruments;
— Development of a Code for Recognized Organizations;
— Measures to protect the safety of persons rescued at sea;
— Election of Chairman and Vice-Chairman for 2012

Members of the public may attend these two meetings up to the seating capacity of the rooms. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact one of the two meeting coordinators:

— For the January 26, 2011 meeting in preparation for BLG 15 contact LT S.M. Peterson by e-mail at *sean.m.peterson@uscg.mil*, by phone/fax at (202) 372–1403/1926, or in writing to (CG–5223), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 no later than January 19, 2011, seven days prior to the meeting. Please note that requests made after January 19, 2011 might not be accommodated.
— For the February 15, 2011 meeting in preparation for FSI 19 contact Mr. E.J. Terminella, by e-mail at *emanuel.j.terminellajr@uscg.mil,* by phone/fax at (202) 372–1239/1918, or in writing at Commandant (CG–543), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7581, Washington, DC 20593–7581 not later than February 8,

2011, 7 days prior to the meeting. Requests made after February 8, 2011 might not be able to be accommodated.

Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo*.

Dated: December 22, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–32887 Filed 12–28–10; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Acceptance of Petitions To Grant a Competitive Need Limitation (CNL) Waiver

AGENCY: Office of the United States Trade Representative.

SUMMARY: The Office of the United States Trade Representative (USTR), in connection with the 2010 GSP Annual Review, has received petitions to waive the competitive need limitations (CNLs) on imports of certain products that are eligible for duty-free treatment under the GSP program. This notice announces those petitions that have been accepted for further review. All other petitions have been rejected. Authorization of the GSP program expires on December 31, 2010. If and when the program is reauthorized, a schedule for submission of public comments and for a public hearing on the petitions will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–9674, and the e-mail address is *Tameka_Cooper@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of eligible articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In a **Federal Register** notice dated July 15, 2010, USTR announced that the deadline for the filing of petitions requesting CNL waivers for the 2010 GSP Annual Review was November 16, 2010 (75 FR 41274). Of the petitions submitted in response to this notice, the GSP Subcommittee of the Trade Policy Staff Committee has accepted for review petitions on the following four products: (1) Lysine and its esters from Brazil (HTS 2922.41.00); (2) pneumatic tires from Sri Lanka (HTS 4011.93.80); (3) certain rubber gloves from Thailand (HTS 4015.19.10); and (4) calcium silicon ferroalloys from Argentina (HTS 7202.99.20).

Additional information regarding the petitions with respect to these articles is provided in the "List of CNL Waiver Submissions Accepted in the 2010 GSP Annual Review" that is posted on the USTR Web site (*http://www.ustr.gov*). Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the listed petitions have been found eligible for review and that such review will take place.

Section 505 of the Trade Act states that duty-free treatment provided under the GSP shall not remain in effect after December 31, 2010. If and when the program is reauthorized, a schedule for submission of public comments and for a public hearing on the petitions will be announced in the **Federal Register**.

Receipt of Advice From the USITC

In accordance with authority delegated to the U.S. Trade Representative by the President, the U.S. Trade Representative has requested, pursuant to section 332(g) of the Tariff Act of 1930 and in accordance with section 503(c)(2)(A) of the 1974 Act, that the U.S. International Trade Commission (USITC) provide its advice on whether any industry in the United States is likely to be adversely affected by a waiver of the CNL specified in section 503(c)(2)(A) of the 1974 Act for the country specified with respect to the products cited above. The USITC has also been requested to provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles, on total U.S. imports, and on U.S. consumers.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2010–32859 Filed 12–28–10; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Regarding China—Subsidies on Wind Power Equipment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on December 22, 2010, in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement"), the United States requested consultations regarding certain subsidies provided by the People's Republic of China (China) on wind power equipment. The consultation request addresses a measure of China entitled the "Provisional Measures on Administration of Special Fund for Industrialization of Wind Power Equipment" ("Wind Power Equipment Fund"). The Wind Power Equipment Fund provides grants that appear to be contingent on the use of domestic over imported wind power equipment, and thus appears to be a prohibited subsidy that is inconsistent with China's obligations under Article 3 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). In addition, as it appears that China has neither made available a translation of the measure into a WTO official language nor notified it to the WTO, China appears to have failed to comply with its transparency obligations under the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 31, 2011, to be assured of timely consideration by USTR.

ADDRESSES: Non-confidential comments (as explained below) should be submitted electronically via the Internet at *http://www.regulations.gov,* docket number USTR–2010–0036. If you are unable to provide submissions by *www.regulations.gov*, please contact

Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comments contain confidential information, the person wishing to submit such comments should contact Sandy McKinzy at (202) 395–9483.

FOR FURTHER INFORMATION CONTACT: Eric Garfinkel, Chief Counsel for China Trade, (202) 395–3150, Joseph Rieras, Assistant General Counsel, (202) 395–3150, Terry McCartin, Deputy Assistant USTR for China Affairs, (202) 395–3900, or Jean Kemp, Director, Steel Trade Policy, (202) 395–5656 for questions concerning the issues in the dispute; or Sandy McKinzy, Legal Technician, (202) 395–9483, for questions concerning procedures for filing submissions in response to this notice.

SUPPLEMENTARY INFORMATION: USTR is providing notice that the United States has requested consultations with the Government of China pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If the consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

The request for consultations follows from the decision of the United States Trade Representative ("Trade Representative") to initiate an investigation under Section 302 of the Trade Act of 1974, as amended ("Trade Act") in response to a petition filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO CLC ("USW"). *See Initiation of Section 302 Investigation and Request for Public Comment: China—Acts, Policies and Practices Affecting Trade and Investment in Green Technology,* 75 FR 64776 (Oct. 20, 2010). In light of the number and diversity of the acts, policies, and practices covered by the petition, and after consulting with the petitioner, the Trade Representative decided, pursuant to Section 303(b) of the Trade Act, to delay for up to 90 days the request for consultations with the Government of China for the purpose of verifying and improving the petition. *Id.* at 64777.

Since the initiation of the investigation on October 15, 2010, USTR has sought information and advice from the petitioner and the appropriate committees established pursuant to section 135 of the Trade Act, has taken account of the public comments submitted in response to the October 20, 2010 notice, and has conducted its own research and worked with other agencies in order to verify and improve the various claims set out in the USW petition. As a result of those efforts, USTR has verified and improved claims involving subsidies provided by China on wind power equipment under its Wind Power Equipment Fund. In particular, USTR has verified that China's Wind Power Equipment Fund provides grants that appear to be contingent on the use of domestic over imported wind power equipment, and thus appears to be a prohibited subsidy that is inconsistent with China's obligations under Article 3 of the SCM Agreement. In addition, as it appears that China has neither made available a translation of the measure into a WTO official language nor notified it to the WTO, China appears to have failed to comply with its transparency obligations under the WTO Agreement. In particular, China appears to have failed to comply with its obligations under Article XVI:1 of the GATT 1994, Article 25 of the SCM Agreement, and Part I, Paragraph 1.2, of the *Protocol on the Accession of the People's Republic of China* (to the extent that it incorporates paragraph 334 of the *Report of the Working Party on the Accession of China*).

Accordingly, on December 22, 2010, the United States requested consultations under the DSU regarding China's Wind Power Equipment Fund, on the bases described above. The consultation request will be published on the WTO Web site, *http://www.wto.org,* under "Disputes."

Since the initiation of the investigation on October 15, 2010, USTR has not been able to verify and improve claims with respect to the remaining acts, policies, and practices covered in the USW petition. Those matters are not included in the request for consultations and are not being continued in the investigation under Section 302(b). However, the Trade Representative continues to have serious concerns with these acts, policies and practices and their effects on U.S. workers and businesses, and will continue to work with the petitioner and other stakeholders to develop additional information and effective means for addressing these matters.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the consultation request. Interested persons may submit public comments electronically to *http://www.regulations.gov,* docket number USTR–2010–0036. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2010–0036 on the home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type." Click on the reference to this notice, and then click "Submit Comment." The *http://www.regulations.gov* site provides the option of submitting comments by filling in a "Type Comment & Upload File" field, or by attaching a document. Given the detailed nature of the comments sought by USTR, interested persons are requested to provide their comments in an attached document. If a document is attached, it is sufficient to type "*See* attached" in the "Type Comment & Upload File" field.

A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page.

USTR may determine that information or advice, other than business confidential information, is nonetheless confidential. If the submitter believes that information or advice may qualify as such, the submitter—

1. Must clearly so designate the information or advice;

2. Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

3. Must provide a non-confidential summary of the information or advice.

Any comment containing information that is business confidential or submitted in confidence must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. Comments submitted in response to this notice will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information that USTR determines to be confidential. Comments open to public inspection may be viewed on *http://www.regulations.gov,* under Docket No. USTR–2010–0036.

If a dispute settlement panel is convened and in the event of an appeal from such a panel, the U.S. submissions, as well as any non-confidential submissions (or non-confidential summaries of submissions) received from other participants in the dispute, will be made available to the public on USTR's Web site at *http://www.ustr.gov*. The report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *http://www.wto.org*.

Bradford Ward,

Deputy General Counsel.

[FR Doc. 2010–32868 Filed 12–28–10; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

ITS Joint Program Office; Human Factors for IntelliDrive SM (HFID); Public Meeting; Notice of Public Meeting

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The U.S. Department of Transportation ITS Joint Program Office (ITS JPO) and the National Highway Transportation Safety Administration (NHTSA) will host a free public meeting to discuss the Human Factors for IntelliDrive (HFID) program on January 6, 2011 from 10 a.m. to 5:30 p.m. at the Flamingo Las Vegas, 3555 Las Vegas Boulevard South Las Vegas, Nevada 89109.

IntelliDrive is a research program under development that will allow vehicles to communicate wirelessly with other vehicles and the surrounding infrastructure, such as traffic signals and work zones. The program has the potential to significantly reduce vehicle crashes, enhance mobility and improve the environment. One of the supporting research programs is Human Factors for IntelliDrive (HFID), a program aimed at understanding the effects of providing drivers with critical safety warning messages. The vision of the HFID research is to address the number of new, competing visual and audible stimuli that put demands on a driver's attention. The goal of the program is to develop guidelines to ensure future IntelliDrive interfaces are effective without increasing distraction. The HFID program will support all of the IntelliDrive applications—safety, mobility, and sustainability—for multiple vehicle types to include: passenger vehicles, passenger transit vehicles, and heavy trucks.

At this meeting, ITS JPO and NHTSA will provide an overview of the entire Human Factors for IntelliDrive program, including Vehicle to Vehicle (V2V) communication and Vehicle to Infrastructure (V2I) communication, heavy truck-related research, and environmental research related IntelliDrive. The presenters will also cover each of the five HFID research tracks and then lead a discussion to facilitate the exchange of ideas with stakeholders. The feedback obtained during the meeting will be considered for the current program and future HFID projects.

Registration will be available on-site. For additional questions, please contact Nicole Oliphant at *noliphant@itsa.org* or 202–721–4215.

Issued in Washington, DC, on the 22nd day of December 2010.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2010–32875 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; System of Records; Statement of General Routine Uses; Notice of Establishment of Two New General Routine Uses and Republication of All General Routine Uses

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Notice to establish two new Privacy Act general routine uses and to republish all general routine uses.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Transportation's Office of the Secretary of Transportation (DOT/OST) is publishing two new general routine uses for all DOT systems of records and republishing all of its general routine uses. Comment is invited on the two new routine uses. The two new routine uses are consistent with the following recommendations:

(1) A recommendation in a memorandum issued by the Office of Management and Budget (OMB) on May 22, 2007 (Memorandum M–07–16 "Safeguarding Against and Responding to the Breach of Personally Identifiable Information") that all Federal agencies publish a routine use for their systems allowing for the disclosure of personally identifiable information to appropriate parties in the course of responding to a breach of data maintained in a system of records; and

(2) A recommendation by the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA) that all Federal agencies publish a routine use for their systems to authorize disclosure of personally identifiable information to OGIS for Freedom of Information Act (FOIA) dispute resolution and compliance review purposes.

DATES: Effective February 14, 2011. Written comments should be submitted on or before the effective date. The proposed new general routine use will be effective February 14, 2011 unless DOT publishes an amended routine use in light of any comments received.

ADDRESSES: Send written comments on the two new general routine uses to Habib Azarsina, Departmental Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *habib.azarsina@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Habib Azarsina, Departmental Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *habib.azarsina@dot.gov* or (202) 366–1965.

SUPPLEMENTARY INFORMATION: The Privacy Act (5 U.S.C. 552a) governs the means by which the United States Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A "system of records" is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register**, for public notice and comment, a system of records notice (SORN) identifying and

describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system and the routine uses for which the agency discloses such information outside the agency. As provided in "Privacy Act Guidelines" issued by OMB on July 1, 1975 (see 40 FR 28966), once an agency has published a routine use that will apply to all of its systems of record (*i.e.,* a general routine use) in the **Federal Register** for public notice and comment, the agency may thereafter incorporate that publication by reference in each system's SORN without inviting further public comment on that use. To date, DOT has published ten general routine uses (*see* 65 FR 19476 published April 11, 2000 and 68 FR 8647 published February 24, 2003).

Because the two new general routine uses would effect a significant change to all DOT systems of record, a report on the establishment of those uses has been sent to Congress and to OMB, in accordance with 5 U.S.C. 552a(r).

The two new general routine uses are compatible with the purposes for which the information to be disclosed under the routine uses was originally collected. With respect to the first new general routine use, individuals whose personally identifiable information is in DOT systems expect their information to be secured; sharing their information with appropriate parties in the course of responding to a confirmed or suspected breach of a DOT system will help DOT protect them against potential misuse of their information by unauthorized persons. With respect to the second new general routine use, individuals whose personally identifiable information is in DOT systems expect their information to be disclosed to or withheld from FOIA requesters in compliance with FOIA; sharing their information with OGIS for the purposes stated will assist DOT in complying with FOIA.

For the reasons set forth above, the following two general routine uses are established:

11. DOT may disclose records from this system, as a routine use, to appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

12. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

For convenience, all twelve DOT general routine uses are republished in their entirety:

The following routine uses apply, except where otherwise noted or where obviously not appropriate, to each system of records maintained by the Department of Transportation, DOT.

1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4a. *Routine Use for Disclosure for Use in Litigation.* It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when—

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her official capacity, or

(c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or

(d) The United States or any agency thereof,

where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4b. *Routine Use for Agency Disclosure in Other Proceedings.* It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when—

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her official capacity, or

(c) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her individual capacity where DOT has agreed to represent the employee, or

(d) The United States or any agency thereof,

where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. The information contained in this system of records will be disclosed to the Office of Management and Budget,

OMB, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

7. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

8. *Routine Use for disclosure to the Coast Guard and to Transportation Security Administration.* A record from this system of records may be disclosed as a routine use to the Coast Guard and to the Transportation Security Administration if information from this system was shared with either agency when that agency was a component of the Department of Transportation before its transfer to the Department of Homeland Security and such disclosure is necessary to accomplish a DOT, TSA or Coast Guard function related to this system of records.

9. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.

10. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

11. DOT may disclose records from this system, as a routine use, to appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

12. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

Dated: December 22, 2010.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. 2010–32876 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 23, 2010, vol. 75, no. 184, page 58015. This collection of information request is for Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements Special Federal Aviation Regulation. The pilot training requires a logbook endorsement and documentation of a training-course completion record.

DATES: Written comments should be submitted by January 28, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0725.

Title: Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Procedures.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: In response to the increasing number of accidents and incidents involving the Mitsubishi MU–2B series airplane, the Federal Aviation Administration (FAA) began a safety evaluation of the MU–2B in July of 2005. As a result of this safety evaluation, the FAA published a Special Federal Aviation Regulation (SFAR) on February 6, 2008 (73 FR 7033) that established a standardized pilot training program. The collection of information is necessary to document participation, completion, and compliance with the pilot training program.

Respondents: Approximately 600 MU–2B pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 minutes.

Estimated Total Annual Burden: 100 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on December 22, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–32854 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0172]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 28, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010–0172 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Douglas, 202–366–2601, Office of Human Environment, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Surface Transportation Environment and Planning (STEP) Cooperative Research Program.

Background: Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU) established a new cooperative research program for environment and planning research in section 507 of Title 23, United States Code, Highways (23 U.S.C. 507). The general objective of the STEP is to improve understanding of the complex relationship between surface transportation, planning, and the environment. The FHWA anticipates that the STEP program will provide resources for national research on issues related to planning, environment and realty. These resources are likely to be included in future surface transportation legislation. The research program established under this section shall ensure that stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees. FHWA will be collecting feedback via a STEP website on the 18 emphasis areas. This information will be used to identify potential research for an annual Research Plan.

The number of stakeholders with an interest in environment and planning research includes three groups:

I—Federal Agencies and Tribal Governments

II—State and Local Governments

III—Nongovernmental Transportation and Environmental Stakeholders

Respondents: An estimated 270 participants annually for a total of approximately 810 participants during the three-year period while the OMB clearance is in effect.

Frequency: Annually.

Estimated Average Burden per Response: 30 minutes each year. Due to the specialized nature of the 18 emphasis areas, most commenters will provide input in only one area.

Estimated Total Annual Burden Hours: Approximately 135 hours annually (405 hours total for the three-year period).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 20, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–32722 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0171]

Agency Information Collection Activities: Notice of Request for Approval of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 28, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010–0171 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Allen Greenberg at *allen.greenberg@dot.gov* or (202) 366–2425, Office of Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE. Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Exploratory Advanced Research (EAR) Program initial stage research on the topic of Dynamic Ridesharing.

Background: The Exploratory Advanced Research (EAR) Program was established to conduct longer term, higher risk research that will result in potentially dramatic breakthroughs for improving the durability, efficiency, environmental performance, productivity, and safety of highway and intermodal transportation systems. To facilitate identification and assessment of higher-risk, breakthrough research topics, the Program conducts literature reviews, event scanning, and targeted convening. As part of an assessment of potential high-risk, breakthrough research on dynamic ridesharing, the EAR Program is conducting this collection of information on behavioral preferences using focus groups.

As a response to the opening of High Occupancy Vehicle (HOV) lanes in the Washington, D.C., metro area in the mid-1970s, a unique commuting phenomenon developed: "slugging." This type of single-trip dynamic carpooling evolved from drivers and passengers coming together to fulfill each party's needs (i.e., allowing drivers to meet HOV requirements and thus use the express travel lanes and riders to enjoy a free, fast trip to work). Academic and entrepreneurial types alike are looking at ways to facilitate dynamic ridesharing through technological means. Some suggestions for enhancing dynamic ridesharing include website forums that connect drivers with riders and Smartphone applications that would allow drivers and riders to register and connect with each other. These efforts build off of the success of three meeting-place based dynamic ridesharing systems that exist in Houston, San Francisco, and Washington, DC. These three systems have no formal leadership or management; rather they have evolved to fulfill a need for carpools created by the presence of HOV lanes. These naturally occurring dynamic ridesharing systems operate by having drivers and riders meet at central, easily accessible locations such as park and ride lots where they create instantaneous carpools based on desired destinations. The lines are highly successful and have existed for a long time (30+ years in the case of DC), and they are a critical component to these robust dynamic ridesharing systems which serve thousands of commuters each weekday. Despite their success and interesting nature, they have been severely understudied by academics and transportation professionals. Focus group participants will be recruited based on a number of criteria. The primary factor is whether participants have utilized dynamic carpooling, then the frequency of their use and finally whether they work for the federal government or private sector. Participants would not be representing their place of work, and they would be asked to participate as members of the public on their own time outside of work hours.

Respondents: The Focus Group will send approximately 108 participants on a three-city tour (Washington, DC; San Francisco, CA; and Houston, TX) to study the informal, dynamic carpooling systems in each city. The government expects the contractor to recruit slugging/casual carpooling participants in each city.

Frequency: Annually.

Estimated Average Burden per Response: There will be approximately 9 focus groups (3 in each city); with each group consisting of 12 participants with a time commitment of 1.5 hours each person. The screening for potential participants will take approximately 5 minutes per person. There will be approximately 108 participants.

Estimated Total Annual Burden Hours: The annual burden for the Focus Group would be between 162 hours. The annual burden for screening participants will be 9 hours.

Annual Total = 171 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 22, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–32723 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6439, Notice No. 22]

Adjustment of Nationwide Significant Risk Threshold

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Adjustment of Nationwide Significant Risk Threshold.

SUMMARY: In accordance with Appendix D to Title 49 Code of Federal Regulations (CFR) Part 222, Use of Locomotive Horns at Highway-Rail Grade Crossings, FRA is updating the Nationwide Significant Risk Threshold (NSRT). This action is needed to ensure that the public has the proper threshold of permissible risk for calculating quiet zones established in relationship to the NSRT. This is the fourth update to the

NSRT, which has fallen from 18,775 to 14,007.

DATES: The effective date is December 29, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Ries, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 493–6299, or *Ronald.Ries@dot.gov;* or Kathryn Shelton, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 493–6038, or *Kathryn.Shelton@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NSRT is an average of the risk indexes for gated public crossings nationwide where train horns are routinely sounded. FRA developed this risk index to serve as one threshold of permissible risk for quiet zones established under this rule across the nation. Thus, a community that is trying to establish and/or maintain its quiet zone, pursuant to 49 CFR part 222, can compare the Quiet Zone Risk Index calculated for its specific crossing corridor to the NSRT to determine whether sufficient measures have been taken to compensate for the excess risk that results from prohibiting routine sounding of the locomotive horn. (In the alternative, a community can establish its quiet zone in comparison to the Risk Index With Horns, which is a corridor-specific measure of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within the quiet zone.)

In 2006, when the final rule titled, "Use of Locomotive Horns at Highway-Rail Grade Crossings," was amended, the NSRT was 17,030 (71 FR 47614, August 17, 2006). In 2007, FRA recalculated the NSRT to be 19,047 (72 FR 14850, March 29, 2007). In 2008, FRA recalculated the NSRT to be 17,610 (73 FR 30661, May 28, 2008). In 2009, FRA recalculated the NSRT to be 18,775 (74 FR 45270, September 1, 2009).

New NSRT

Using collision data from 2005 to 2009, FRA has recalculated the NSRT based on formulas identified in Appendix D to 49 CFR Part 222. In making this recalculation, FRA noted that the total number of gated, non-whistle-ban crossings was 41,326.

$$\text{Fatality Rate} = \frac{\text{Fatalities}}{\text{Fatal Incidents}} = \frac{347}{275} = 1.2618$$

$$\text{Injury Rate} = \frac{\text{Injuries in Injury-Only Incidents}}{\text{Injury-Only Incidents}} = \frac{970}{661} = 1.4674$$

Applying the fatality rate and injury rate to the probable number of fatalities and casualties predicted to occur at each of the 41,326 identified crossings and the predicted cost of the associated injuries and fatalities, FRA calculates the NSRT to be 14,007.

Issued in Washington, DC, on December 22, 2010.

Jo Strang,

Associate Administrator for Railroad Safety/ Chief Safety Officer.

[FR Doc. 2010–32778 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system, as detailed below.

Docket Number FRA–2010–0175

Applicant: Elgin, Joliet and Eastern Railway Company, Mr. Timothy Luhm, Manager S&C, 17641 South Ashland Avenue, Homewood, IL 60430.

The Elgin, Joliet and Eastern Railway Company (EJ&E) seeks approval of the proposed discontinuance of the traffic control system (TCS) on the Chicago Division near Gary, Indiana. The proposed discontinuance is from control point (CP) Kirk Yard Junction to, but not including, CP Stockton 2 on the Matteson Subdivision Main 1 and Main 2; and from CP Kirk Yard Junction to, but not including, Stockton 1 on the Lake Front Subdivision Main Track.

The discontinuance consist of the removal of the TCS on Main Track 1 and 2 between milepost (MP) 44.44 and MP 45.41 on the Chicago Division, Matteson Subdivision, and Main Track also known as the Lake Front Line between MP 11.19 and MP 12.10 on the Chicago Division, Lakefront Subdivision, as well as all tracks contained with CP Kirk Yard Junction between MP 45.41 and MP 45.66 on the Chicago Division, Matteson Subdivision.

The reason given for the proposed change is that the TCS impedes train operation on these tracks due to the congestion in the area from the Kirk Yard operations. There are plans in place to change track and switch arrangements in this area to facilitate future operations at Kirk Yard.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–1075) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that

date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on December 23, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–32850 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Vancouver, Washington

[Waiver Petition Docket Number FRA–2010–0170]

The City of Vancouver, WA (City), seeks a permanent waiver of compliance from a certain provision of 49 CFR part 222, Use of Locomotive Horns at Highway-Rail Grade Crossings. The City intends to establish a New Quiet Zone under the provisions of 49 CFR 222.39. Specifically, the City is seeking a waiver from the provisions of 49 CFR 222.25(b)(1), which discusses the treatment of private highway-rail grade crossings located in New Quiet Zones that allow access to the public or to active industrial or commercial sites, so that a private crossing that provides access to three homes (one of which includes an office for the provision of professional counseling services) does not have to be treated in accordance with the recommendations of a diagnostic team.

Title 49 CFR 222.25(b)(1) reads as follows: "Private highway-rail grade crossings that are located in New Quiet Zones or New Partial Quiet Zones and allow access to the public, or which provide access to active industrial or commercial sites must be evaluated by a diagnostic team and equipped or treated in accordance with the recommendations of such diagnostic team."

The City is in the process of establishing a New Quiet Zone along the BNSF Railway's (BNSF) Northwest Division, Fallbridge Subdivision, which would extend from approximately Milepost (MP) 17.82 to MP 19.63. The New Quiet Zone will consist of three public at-grade crossings: SE 139th Avenue (DOT #090090W), SE 147th Avenue (DOT #090092K) and SE 164th Avenue (DOT #090093S). (**Note:** The City's waiver petition erroneously provides the number as DOT #090094Y, which is a private highway-rail grade crossing that is not included in the proposed quiet zone). The New Quiet Zone also will include in the waiver a private highway-rail grade crossing, referred to as SE 144th Avenue (DOT #090091D) due to its close proximity to SE 144th Avenue, even though the crossing in question is not a public highway-rail grade crossing. This private highway-rail grade crossing is located between the SE 139th Avenue and SE 147th Avenue public highway-rail grade crossings. The City believes that FRA did not have complete and accurate information regarding the nature and use of this private crossing and therefore was not able to evaluate all pertinent factors and information when it determined that the private crossing allowed access to the public.

The City seeks a waiver of FRA's determination that the private crossing at SE 144th Avenue allows access to the public due to a resident's possession of a Home Occupation Permit under Vancouver Municipal Code Chapter 20.860. If FRA does not change its determination, the City seeks a waiver from complying with the provisions of 49 CFR 222.25(b)(1) so that the private crossing does not have to be treated in accordance with the recommendation of the diagnostic team.

The City provides several reasons why the private crossing at SE 144th Avenue does not meet the intent of 49 CFR 222.25(b)(1) and should be treated as a private crossing without public access. First, it states that the crossing does not allow access to the general public as the crossing has signs stating: "PRIVATE RR CROSSING. NO TRESPASSING. RIGHT TO PASS BY PERMISSION SUBJECT TO CONTROL OF OWNER THE BNSF RWY CO." Only homeowners or invitees of the homeowners are given permission to cross. "Invitees" would be either invited guests or invited counseling patients. Access allowed under the Home Occupation Permit is solely for the provision of professional counseling services by appointment at the invitation of the home owner providing those services at their residence. In addition, that permit limits the maximum number of vehicle trips (customer, employee, and delivery vehicles) to an aggregate total of not more than six per day.

Secondly, the City notes that a counseling patient's visit is arranged by appointment so that there would be no random arrival of patients. Members of the general public, without an invitation and without an appointment, are not allowed. The counseling patient is passing with the expressed permission of the owner. They are not uninvited random members of the public. From a safety standpoint, there is no material difference between clients invited to the counselor's residence and social guests invited to any residence. The use of this private crossing is minimal and highly restrictive. It is completely different than having a park on the other side of the crossing, a beach open to the general public, or a bait shop or similar open commercial establishment where uninvited members of the general public would have a reason to visit and traverse the crossing. The City believes these are examples of the types of situations that were intended to be covered under 49 CFR 222.25(b)(1), not the situation that exists at the SE 144th Avenue private crossing.

Thirdly, the City states that the volume of traffic on this private crossing is not significant by FRA highway-rail grade crossing standards. The volume of traffic has been measured on the private roadway and is less than the number of trips normally expected to be generated by the three homes that it services. It was measured at 20 vehicles per day and the Institute for Transportation Engineers Trip Generation Handbook estimates three homes should produce 30 vehicle trips per day. The number of invited counseling patients and related traffic is also limited under the Home Occupation Permit, referenced above, to no more than 6 trips per day total.

The City convened two diagnostic team meetings in order to evaluate the

SE 144th Avenue private crossing and to identify a low cost safety improvement for the crossing. BNSF only supported a full supplemental safety measure (SSM) consisting of a four-quadrant gate improvement. This would result in significant civil improvements and associated costs (estimated to be more than $500,000) and environmental impacts to a nearby wetland. At the second diagnostic team meeting, input from additional parties was sought out, and included representatives from the Washington State Department of Transportation Rail Office, Amtrak, and the Washington Utility and Transportation Commission. The diagnostic team, again, was not able to reach consensus, so an SSM of a four-quadrant gate system was recommended by BNSF as the default SSM. The use of wayside horns was discussed but was unacceptable to the residents in the area.

The City states that it works closely with BNSF on a variety of projects and believes it has a good working relationship with the railroad. The City contacted BNSF immediately regarding the proposed waiver. The City requested BNSF's input on this waiver; however, BNSF has indicated in a letter dated October 29, 2010, that it will not support the City's petition. The City does not believe a joint petition, in this particular case, significantly contributes to public safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0170) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on December 23, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–32826 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Grand Canyon Railway, Inc.

[Waiver Petition Docket Number FRA–2010–0143]

The Grand Canyon Railway, Inc. (GRCX) seeks a waiver of compliance with the *Steam Locomotive Inspection and Maintenance Standards,* 49 CFR 230.16 and 230.17, as they pertain to the requirement for annual inspection and 1,472 service day inspection for steam locomotive number 4960. Locomotive number 4960 inspections are due to expire on June 30, 2011, and GRCX request the locomotive be allowed to continue in service until September 30, 2011, an additional 92 days. If granted, the locomotive would accrue an additional 10 service days and would receive all required inspections after the September 30, 2011, date.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0143) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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Issued in Washington, DC on December 23, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–32823 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Part 211, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation, Inc.

[Waiver Petition Docket Number FRA–2010–0173]

Pursuant to 49 CFR 213.113(a), and with respect to testing Class 1 tracks in yards, CSX Transportation, Inc. (CSX) petitions for a waiver from applying remedial actions, which are prescribed for defects found during rail inspections for Class 3 tracks and above, and is proposing alternate remedial actions to be taken for defects found during inspection of Class 1 yard tracks.

CSX requests a waiver from 49 CFR 213.113 remedial actions for the following reasons:

1. Inspection of rail is not required for Class 1 yard tracks under 49 CFR 213.237, and a program to do so (under a waiver grant) increases safety beyond present requirements.

2. Class 1 yard tracks are low risk due to the 10 mph maximum speed.

3. Defect growth, which is dependent on accumulated tonnage, is slower on Class 1 yard tracks due to slow accumulation of tonnage.

4. Yard tracks can have unusual rail sections requiring uncommon rail plugs and bars, which can extend the remedial action lead time beyond the actions prescribed for Class 3 and above tracks.

5. The proposed Class 1 yard track remedial actions provide for additional time, if necessary and prudent, to relay and replace fit rail into the track instead of using plug rail.

6. Application of remedial actions of defects found in Class 3 and above tracks, to defects found in Class 1 yard tracks, may divert limited resources and focus away from higher risk Class 3 and above tracks.

CSX proposes the following remedial actions for defects found during rail inspection of Class 1 yard track, and requests that this waiver be granted to apply these remedial actions to Class 1 yard track only. (Refer to 49 CFR 213.113(a)(2), remedial action table and notes.)

Proposed remedial actions for defects found during testing of Class 1 yard tracks:

1. Compound fissure:

- Note B, no change.
- Note A2, change to, "* * * up to 48 hours prior to another such visual inspection * * *."
- Note A, no change.

2. Transverse fissure, detail fracture, engine burn fracture, defective weld:

- Less than 80 percent but not less than 60 percent; apply bars within 48 hours.
- 100 percent but not less than 80 percent; inspect every 48 hours until repaired or bars applied.

3. Horizontal split head, vertical split head, split web, piped rail, and head and web separation:

- Greater than 1 inch and less than 4 inches; inspect rail during monthly yard track inspection.
- Greater than 4 inches; inspect every 48 hours until repaired or bars applied.
- Break out in rail head; inspect every 48 hours until repaired or bars applied.

4. Bolt hole crack:

- Greater than ½ inch and less than 1½ inches; inspect rail during monthly yard track inspection.
- Break out in rail head; inspect every 48 hours until repaired or bars applied.

5. Broken base, damaged rail:

- Inspect during monthly yard track inspection.

6. Ordinary break:

- Apply bars within 48 hours.

Once granted, this waiver will improve track safety by specifically identifying rail inspection programs for yard tracks and prescribing remedial actions specific to yard tracks.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0173) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477–78) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 23, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–32819 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Part 211, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation, Inc.

[Waiver Petition Docket Number FRA–2010–0172]

Pursuant to 49 CFR 213.113(a), CSX Transportation, Inc. (CSX) petitions for a waiver from the accepted practice of start/stop rail testing for Phase III of our nonstop continuous rail test pilot project beginning April 1, 2011, for a period of up to 1 year on the main tracks between Richmond, VA, and Jacksonville, FL. The subdivisions that would be traversed are the North End, South End, Charleston, Savannah, Nahunta, and Jacksonville Terminal.

Based on the results of the previous phases of nonstop continuous rail test, CSX will not perform parallel/redundant start/stop rail testing on track segments being nonstop continuous rail tested under this waiver. Instead, CSX will produce biweekly, nonstop, continuous rail test reports for review by the FRA Rail Integrity managers.

The nonstop continuous high-speed rail test vehicle will be a self-propelled/railbound ultrasound/induction flaw detection vehicle operating at speeds up to 30 mph. This vehicle will make runs every 2 weeks over the assigned territory. Upon completion of each run, data will be analyzed offline by a group of experts with experience in this process. The analysis will categorize and prioritize suspected defective locations for post-test verification. Two or three teams of verifiers will then be sent out with field instruments to check these suspect locations based upon GPS coordinates. All suspect locations will be checked 60 feet on either side of the suspect GPS location. Remedial actions will be applied as per 49 CFR 213.113 for confirmed rail defects.

Nonstop continuous rail testing will provide the capability to test the track more quickly and frequently, and to minimize the risk of rail service failures.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0172) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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Issued in Washington, DC, on December 23, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–32815 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0111]

Stakeholder Meetings Regarding the U.S.-Flag Great Lakes Fleet Revitalization Study

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce three public listening-session meetings that are being held to gather data and comments to inform the Maritime Administration's U.S.-Flag Great Lakes Fleet Revitalization Study. The three meetings will be identical in terms of agenda and purpose; they are being held in the different locations to maximize stakeholder participation.

The U.S.-Flag Great Lakes Fleet Revitalization Study will examine the current and potential future role of Great Lakes shipping in supporting the region's economy and as an important component of the greater U.S. Marine Highway system serving the Nation at large. It will also be used to assess the impact of new environmental regulations on the U.S.-Flag Great Lakes Fleet. Of particular interest is the likely impact of the EPA's final emission standards for new marine diesel "Category 3" engines that goes into effect in January 2012.

This study calls for the identification and evaluation of options to recapitalize U.S. vessels and port infrastructure on the Great Lakes, using private and public sector investments, to generate the greatest net benefits for the region and the Nation.

This Maritime Administration study will be a two-phase effort to estimate the costs and options for complying with the new environmental regulations. The first phase will be a data gathering effort. An inventory of current vessel and port assets will be developed. That inventory will be used to determine if the Maritime Administration can assist the U.S. Flag Great Lakes vessel operators in complying with the new regulations.

During the second phase of the study, the Maritime Administration will examine a mix of private and public sector financing options that could be used for vessel or port alterations necessitated by the new environmental regulations. This analysis will be used in developing strategies for how the Maritime Administration might assist the U.S.-Flag Great Lakes Fleet and ports in making those changes.

The Maritime Administration will use the study's findings to develop strategies to promote the U.S.-Flag Great Lakes Fleet and Ports. Stakeholder input is an essential part of the strategy-development process, so the study plan includes three stakeholder listening-sessions where the important issues raised by the study will be discussed. Topics of discussion include the new EPA environmental regulations such as the Control of Emissions from Category 3 Marine Engines and their impact on Great Lakes vessel operators, the state of the Great Lakes shipping markets, and issues facing vessel operators and port operators.

FOR FURTHER INFORMATION CONTACT: For general background information or technical information, contact Stephen

Shafer, Maritime Administration, Office of Policy and Plans, 1200 New Jersey Avenue, SE., Washington, DC 20590, or by e-mail: *GreatLakesStudy@dot.gov.*

Dates and Addresses:

The Cleveland, Ohio, meeting will take place on February 15, 2011, from 8 a.m. to 5 p.m., Eastern Daylight Saving Time. The meeting will be held at Hyatt Regency Cleveland at The Arcade, 420 East Superior Avenue, Cleveland, Ohio, 44114.

Persons interested in attending the meeting should register by February 4, 2011.

The Duluth, Minnesota, meeting will take place on February 23, 2011, from 8 a.m. to 5 p.m., Eastern Daylight Saving Time. The meeting will be held at the Inn on Lake Superior, 350 Canal Park Drive, Duluth, Minnesota, 55802.

Persons interested in attending the meeting should register by February 11, 2011.

The Chicago, Illinois, meeting will take place on February 25, 2011, from 8 a.m. to 5 p.m., Eastern Daylight Saving Time. The meeting will be held at the Sheraton Chicago Hotel and Towers, 301 East North Water Street, Chicago, Illinois, 60611.

Persons interested in attending the meeting should register by February 11, 2011.

Registration: The meetings are open to the public. Advanced registration is recommended. To register, interested parties should send their name, group affiliation, and which of the three meetings they will attend to *GreatLakesStudy@absconsulting.com.* The meeting agenda will be sent to registered participants prior to the meeting.

The Public Meeting will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact ABS Consulting at *GreatLakesStudy@absconsulting.com*, as soon as possible, but preferably no less than five business days before the scheduled meeting.

By Order of the Maritime Administrator,

Dated: December 23, 2010.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–32761 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0373 (Notice No. 10–10)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before February 28, 2011.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2010–0373) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov*. Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR 171.6 and the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Requirements for Cargo Tanks.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in parts 178 and 180 of the HMR involving the manufacture, qualification, maintenance and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) *Registration Statements:* Cargo tank manufacturers and repairers, and cargo tank motor vehicle assemblers are required to be registered with DOT by furnishing information relative to their qualifications to perform the functions in accordance with the HMR. The registration statements are used to identify these persons in order for DOT

to ensure that they possess the knowledge and skills necessary to perform the required functions and they are performing the specified functions in accordance with the applicable regulations.

(2) *Requalification and maintenance reports:* These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained and are in proper condition for the transportation of hazardous materials.

(3) *Manufacturers' data reports, certificates and related papers:* These reports are prepared by cargo tank manufacturers and certifiers, and are used by cargo tank owners, operators, users and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 101,507.

Frequency of Collection: Periodically.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Summary: This collection is applicable upon occurrence of incidents as prescribed in §§ 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation or closure of a main artery. Incidents meeting criteria in § 171.15 also require a telephonic report. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

Affected Public: Shippers and carriers of hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 1,781.

Total Annual Responses: 17,810.

Total Annual Burden Hours: 23,746.

Frequency of collection: On occasion.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: This information collection consolidates and describes the information collection provisions in the HMR involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: Shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; and packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 3,817.

Total Annual Responses: 21,519.

Total Annual Burden Hours: 15,270.

Frequency of collection: On occasion.

Title: Flammable Cryogenic Liquids.

OMB Control Number: 2137–0542.

Summary: Provisions in § 177.840(a)(2) specify certain safety procedures and documentation requirements for drivers of motor vehicles transporting flammable cryogenic liquids. This information allows the driver to take appropriate remedial actions to prevent a catastrophic release of the flammable cryogenics should the temperature of the material begin to rise excessively or if the travel time will exceed the safe travel time. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability and high compression ratio when in a liquid state.

Affected Public: Carriers of cryogenic materials.

Annual Reporting and Recordkeeping Burden:

Total Respondents: 65.

Total Annual Responses: 18,200.

Total Annual Burden Hours: 1,213.

Frequency of collection: On occasion.

Title: Rail Carrier and Tank Car Tank Requirements.

OMB Control Number: 2137–0559.

Summary: This information collection consolidates and describes the information provisions in parts 172, 173, 174, 179, and 180 of the HMR on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance and use of tank cars. The types of information collected include:

(1) *Approvals of the Association of American Railroads (AAR) Tank Car committee:* An approval is required from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval also is required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179 or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) *Progress Reports:* Each owner of a tank car that is required to be modified to meet certain requirements specified in § 173.31 must submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) *FRA Approvals:* An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. Also an FRA approval is required for the movement of any tank car that does not conform to the applicable requirements in the HMR. These latter movements are currently being reported under the information collection for special permit applications.

(4) *Manufacturer Reports and Certificate of Construction:* These documents are prepared by tank car manufacturers and used by owners,

users and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) *Quality Assurance Program:* Facilities that build, repair, and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) *Inspection Reports:* A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners and rail carriers of tank cars.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 266.

Total Annual Responses: 16,782.

Total Annual Burden Hours: 2,689.

Frequency of collection: Annually.

Title: Container Certification Statement.

OMB Control Number: 2137–0582.

Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement is intended to ensure an adequate level of safety for transport of explosives aboard vessel and ensure consistency with similar requirements in international standards.

Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 650.

Annual Responses: 890,000.

Annual Burden Hours: 14,908.

Frequency of collection: On occasion.

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Summary: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, and reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 68.

Annual Responses: 68.

Annual Burden Hours: 5,290.

Frequency of collection: On occasion.

Title: Response Plans for Shipments of Oil.

OMB Control Number: 2137–0591.

Summary: In recent years, several major oil discharges damaged the marine environment of the United States. Under authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, PHMSA issued regulations in 49 CFR Part 130 that require preparation of written spill response plans.

Affected Public: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 8,000.

Annual Responses: 8,000.

Annual Burden Hours: 10,560.

Frequency of collection: On occasion.

Title: Hazardous Materials Security Plans.

OMB Control Number: 2137–0612.

Summary: To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirement applies to shipments of: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment of hazardous materials in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases, or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment that requires placarding; and (6) select agents. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. A security plan will enable shippers and carriers to reduce the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 54,999.

Total Annual Responses: 54,999.

Total Annual Burden Hours: 427,719.

Frequency of collection: On occasion.

Title: Inspection and Testing of Meter Provers.

OMB Control Number: 2137–0620.

Summary: This information collection and recordkeeping burden is the result of efforts to eliminate special permits that are no longer needed and incorporate the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the proper amount of liquid hazardous materials is being loaded and unloaded involving bulk packagings, such as cargo tanks and portable tanks. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material, and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in part 178. However, these meter provers must be visually inspected annually and hydrostatic pressure tested every five years in order to ensure they are properly working as specified in § 173.5a of the HMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every five years to ensure that the meter provers used in the flow of liqiuid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with § 180.415(b) and in accordance with § 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and

pressure test until the meter prover is requalified.

Affected Public: Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 50.

Total Annual Responses: 250.

Total Annual Burden Hours: 175.

Frequency of collection: On occasion.

Title: Requirements for United Nations (UN) Cylinders.

OMB Control Number: 2137–0621.

Summary: This information collection and recordkeeping burden is the result of efforts to amend the HMR to adopt standards for the design, construction, maintenance and use of cylinders and multiple-element gas containers (MEGCs) based on the standards contained in the United Nations (UN) Recommendations on the Transport of Dangerous Goods. Aligning the HMR with the UN Recommendations promotes flexibility, permits the use of technological advances for the manufacture of the pressure receptacles, provides for a broader selection of pressure receptacles, reduces the need for special permits, and facilitates international commerce in the transportation of compressed gases. Information collection requirements address domestic and international manufacturers of cylinders that request approval by the approval agency for cylinder design types. The approval process for each cylinder design type includes review, filing, and recordkeeping of the approval application. The approval agency is required to maintain a set of the approved drawings and calculations for each design it reviews and a copy of each initial design type approval certificate approved by the Associate Administrator for not less than 20 years.

Affected Public: Fillers, owners, users, and retesters of UN cylinders.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 50.

Total Annual Responses: 150.

Total Annual Burden Hours: 900.

Frequency of collection: On occasion.

Issued in Washington, DC, on December 22, 2010.

Delmer F. Billings,

Acting Director, Standards and Rulemaking Division.

[FR Doc. 2010–32718 Filed 12–28–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 22, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before January 28, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1575.

Type of Review: Extension without change to a currently approved collection.

Title: REG–116608–97 (TD 8953) (Final) Eligibility Requirements after Denial of the Earned Income Credit.

Abstract: This information is to provide guidance to taxpayers who have been denied the earned income credit (EIC). Under Section 1.32–3, to demonstrate eligibility, the taxpayer must file with Form 1040 a properly completed Form 8862.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1903.

Type of Review: Extension without change to a currently approved collection.

Title: REG–124405–03 (TD 9168) (final) Optional 10–Year Writeoff of Certain Tax Preferences.

Abstract: This collection of information is required by the IRS to verify compliance with section 59(e). This information will be used to determine whether the amount of tax has been calculated correctly.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–2069.

Type of Review: Extension without change to a currently approved collection.

Title: Form 8283–V Payment Voucher for Filing Fee Under Section 170(f)(13).

Abstract: The Pension Protection Act of 2006 (PL 109–280) provides in section 1213(c) of the Act that taxpayers claiming a deduction for a qualified conservation contribution with respect to the exterior of a building located in a registered historic district in excess of $10,000, must pay a $500 fee to the Internal Revenue Service or the deduction is not allowed.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 690 hours.

OMB Number: 1545–2092.

Type of Review: Extension without change to a currently approved collection.

Title: Taxpayer Advocacy Panel (TAP) Tax Check Waiver.

Abstract: Taxpayer Advocacy Panel (TAP) members must be compliant with their tax obligations and must undergo and pass a tax check in order to be selected as a TAP member. By executing the Tax Check Waiver, the applicant provides information to facilitate conduct of the tax check and authorizes the IRS official conducting the check to release the results, which are otherwise confidential, to the Director of TAP to help in determining the suitability of the applicant for membership on TAP.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 37 hours.

OMB Number: 1545–2176.

Type of Review: Extension without change to a currently approved collection.

Title: REG–134235–08(TD 9501) (Final)—Furnishing Identifying Number of Tax Return Preparer.

Abstract: These proposed regulations amend section 1.6109–2 of the Income Tax Regulations to provide that tax return preparers must furnish a preparer tax identification number (PTIN) on tax returns and claims for refund of tax as prescribed by the Internal Revenue Service in forms, instructions, or other guidance. After the proposed effective date of December 31, 2010, a tax return preparer's social security number may no longer be used as a valid identifying number on tax returns and claims for refund. The proposed regulations provide that tax return preparers shall apply for and regularly renew a PTIN as the IRS prescribes. In addition, under the proposed regulations, the IRS may prescribe in forms, instructions, or other guidance (including regulations) requirements related to applying for or renewing a PTIN. The proposed regulations, and any collection of information required by the regulations, are necessary to accurately identify tax return preparers and the tax returns and

refund claims they prepare and to implement and administer provisions of the Internal Revenue Code. TD 9501 published on Sept 30, 2010 contain the final regulations.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

Bureau Clearance Officer: Allan Hopkins, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 622–6665.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–32857 Filed 12–28–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 22, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by contacting the Treasury Department Office Clearance Officers listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before January 28, 2011 to be assured of consideration.

Domestic Finance/Terrorism Risk Insurance Program (TRIP)

OMB Number: 1505–0200.

Type of Review: Extension without change of a currently approved collection.

Title: Terrorism Risk Insurance Program Loss Reporting.

Form: TRIP 01, TRIP 02B, TRIP 02C, TRIP 02A, TRIP 02.

Abstract: Information collection made necessary by the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Extension Act of 2005, the Terrorism Risk Insurance Program Reauthorization Act of 2007, and by Treasury implementing regulations to pay Federal share to commercial property and casualty insurers for terrorism losses.

Respondents: Businesses or other for-profits; Individuals or Households.

Estimated Total Reporting Burden: 4,200 hours.

TRIP Clearance Officer: Sara Clary, TRIP, 1425 New York Ave., NW., Room 2101, Washington, DC 20220; (202) 622–7814.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–32860 Filed 12–28–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2011, and ending on June 30, 2011, the prompt payment interest rate is 2⅝ per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Dorothy Dicks, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. A copy of this Notice is available at *http://www.treasurydirect.gov.*

DATES: Effective January 1, 2011, to June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Kimberly Poling, Acting Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5103; Dorothy Dicks, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5115; Paul Wolfteich, Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504–3705; or Brenda L. Hoffman, Attorney-Advisor, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504–3706.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under § 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of interest. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). "The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made." 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning January 1, 2011, and ending on June 30, 2011, is 2⅝ per centum per annum.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2010–32856 Filed 12–28–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Appalachian Community Bank, FSB, McCaysville, GA, Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Appalachian Community Bank, FSB, McCaysville, Georgia, (OTS No. 18033) on December 17, 2010.

Dated: December 21, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–32655 Filed 12–28–10; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Wednesday,
December 29, 2010

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. FSIS–2005–0018]

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Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to require nutrition labeling of the major cuts of single-ingredient, raw meat and poultry products on labels or at point-of-purchase, unless an exemption applies. FSIS is also amending its regulations to require nutrition labels on all ground or chopped meat and poultry products, with or without added seasonings, unless an exemption applies. In addition, the rule provides that, when a ground or chopped product does not meet the regulatory criteria to be labeled "low fat," a lean percentage statement may be included on the label or in labeling as long as a statement of the fat percentage that meets the specified criteria also is displayed on the label or in labeling.

DATES: *Effective Date:* This final rule is effective on January 1, 2012.

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Section I.

SUPPLEMENTARY INFORMATION:

Background

The Nutrition Labeling and Education Act (NLEA) of 1990 required nutrition labeling of most foods regulated by the Food and Drug Administration (FDA). Because FSIS is committed to providing consumers with the most informative labeling system possible, FSIS published regulations establishing comparable nutrition labeling requirements for meat and poultry products. FSIS published an advance notice of proposed rulemaking on nutrition labeling of meat and poultry products on April 2, 1991 (56 FR 13564), a proposed rule on November 27, 1991 (56 FR 60302), a final rule on January 6, 1993 (58 FR 632), and subsequently other amendments to the rule.

The Agency's regulations currently require nutrition labels on the packages of all multi-ingredient and heat processed meat and poultry products, unless an exemption applied. The required nutrition labeling provisions are referred to as "the mandatory nutrition labeling program." The Agency's 1993 regulations also established guidelines for voluntary nutrition labeling of single-ingredient, raw meat and poultry products, including single-ingredient, raw ground or chopped products.

On January 18, 2001, FSIS published a proposed rule in the **Federal Register** entitled, "Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products" (66 FR 4969). Because of the length of time since the publication of the proposed rule, FSIS published a supplemental proposed rule on December 18, 2009, to provide the public an additional opportunity to comment (74 FR 67736). This final rule is consistent with the provisions in the supplemental proposed rule.

Nutrition labeling continues to be an integral part of USDA's efforts to educate consumers concerning nutrition and diets. Since 1980 USDA and the Department of Health and Human Services (HHS) have jointly published the Dietary Guidelines for Americans every five years. The Dietary Guidelines provide advice concerning food choices that promote health and prevent disease. The Dietary Guidelines for Americans, 2005, advises consumers to aim for a total fat intake between 20 to 35 percent of calories (page viii). In addition, the Dietary Guidelines for Americans, 2005, includes a chart showing the recommended upper limits for grams of saturated fat per day for a range of total calories per day (page 31). The nutrition information that FSIS is requiring in this final rule on the labels of ground or chopped products and on either labels or point-of-purchase materials for the major cuts of single-ingredient, raw meat and poultry products would include the number of calories and the grams of total fat and saturated fat the product contains. The information FSIS is requiring would, therefore, assist consumers in following the advice in the Dietary Guidelines for Americans, 2005.

Major cuts: This final rule requires nutrition labeling of the major cuts of single-ingredient, raw meat and poultry products identified in §§ 317.344 and 381.444 that are not ground or chopped, except for certain exemptions. For these products, the final rule requires that nutrition information be provided on the label or at point-of-purchase, unless an exemption applies.

In its two most recent surveys of the voluntary nutrition labeling of single-ingredient, raw products, FSIS found that significant participation in the voluntary nutrition labeling program did not exist (66 FR 4972, January 18, 2001). Under 9 CFR 317.343 and 9 CFR 381.443, if FSIS finds that there is not significant participation by retail stores in the voluntary nutrition labeling program to provide nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products, FSIS is obligated to institute rulemaking to require that such labeling be provided. FSIS regulations provide that a food retailer participates at a significant level (1) if the retailer provides nutrition labeling information for at least 90 percent of the major cuts of single-ingredient, raw meat and poultry products it sells; and (2) if the nutrition label on these products is consistent in content and format with the mandatory program, or if nutrition information is displayed at point-of-purchase in an appropriate manner. Significant participation by food retailers exists if at least 60 percent of all companies that were evaluated were participating in accordance with the guidelines. Based on the survey data from the two most recent surveys from 1996 and 1999, less than 60 percent of stores evaluated were participating in accordance with the guidelines. Therefore, significant participation in the voluntary nutrition labeling program did not exist, and FSIS proceeded with rulemaking.

Under § 317.4, FSIS's Labeling and Program Delivery Division (LPDD) reviews labels on meat and poultry products that have been submitted for approval. Based on its label review, FSIS has not seen an increase in nutrition labeling of the major cuts of single-ingredient raw, meat and poultry products since the surveys were conducted. Compliance investigators in FSIS's Office of Program Evaluation, Enforcement & Review (OPEER) also have not seen an increase in the number of packages of the major cuts of single-ingredient, raw meat and poultry products that have nutrition facts panels on their labels at retail or an increase in the availability of point-of-purchase materials that provide nutrition information for such products at retail since the last compliance surveys were conducted. For these reasons and because no other evidence has been submitted to FSIS that significant participation in the voluntary program

now exists, FSIS has concluded that this final rule is necessary.

FSIS has determined that major cuts of single-ingredient raw, meat and poultry products that do not bear nutrition information on their labels or on point-of-purchase materials will be misbranded, under section 1(n) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(n)(1)) and section 4(h)(1) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 453(h)(1)). Without nutrition information on their labeling, FSIS has concluded that the labeling of these products will be false or misleading because it will not provide consumers with sufficient information to assess the nutrient content of the major cuts and will not enable consumers to select major cuts that fit into a healthy diet that meets their individual needs.

Consumers are given a rough indication of the fat content of major cuts of poultry based on whether the product has skin and based on the levels of attached fat in the product. Similarly, consumers are given a rough indication of the fat content of major cuts of meat products based on internal marbling and attached fat. However, without nutrition labeling for the major cuts, consumers cannot assess precise levels of fat (*e.g.,* 10 grams vs. 20 grams of fat per serving) and cannot know the levels of specific nutrients, such as saturated fat, in these products. Therefore, without nutrition labeling of these products, consumers cannot make educated choices about consuming the major cuts.

To provide flexibility, the rule allows nutrition information to be provided on the labels of individual packages of the major cuts of single-ingredient, raw products and, to be provided on point-of-purchase materials. Further, FSIS has determined that point-of-purchase labeling is appropriate because consumers can generally estimate the fat content in these products, and because the nutrient content of any given major cut is relatively uniform across the market.

Ground or Chopped Products: This final rule requires that nutrition labels be provided for all ground or chopped products (livestock species) and hamburger, with or without added seasonings, unless an exemption applies. Similarly, this final rule requires that nutrition labels be provided for all ground or chopped poultry (kind), with or without added seasonings, unless an exemption applies. Under this final rule, products that would be required to bear nutrition labels include single-ingredient, raw hamburger, ground beef, ground beef patties, ground chicken, ground turkey, ground chicken patties, ground pork, and ground lamb.

Unlike other single-ingredient, raw products, producers are able to formulate precisely the fat content of ground or chopped products. Therefore, in this respect, these products are similar to products in the existing mandatory program that are required to bear nutrition labels. Other single-ingredient, raw products cannot be formulated in the same manner or to the same degree as ground products.

In ground or chopped products, the fat is uniformly distributed throughout the product and is not clearly distinguishable on the surface of the product. The Agency has concluded that consumers cannot estimate the level of fat in these products and cannot compare the levels of fat in these products to those in other products. Additionally, producers sometimes use meat from advanced meat recovery (AMR) systems and low temperature rendering (LTR) in ground or chopped beef or pork products, which can affect their nutrient content. For these reasons, FSIS has concluded that ground or chopped meat and poultry products that do not bear nutrition information will be misbranded under section 1(n)(1) of the FMIA and section 4(h)(1) of the PPIA.

FSIS is requiring that nutrition information for ground or chopped products appear on the label of these products (unless an exemption applies), as is required for multi-ingredient and heat processed products, rather than on point-of-purchase materials. Because there are numerous formulations of ground or chopped products, it would be difficult for producers or retailers to develop point-of-purchase materials that would address all the different formulations that exist for these products. Furthermore, it would be difficult for consumers to find the correct information for a specific ground or chopped product on point-of-purchase materials that include information concerning numerous formulations of these products.

Non-major Cuts of Single-Ingredient, Raw Meat and Poultry Products that are not Ground or Chopped: FSIS is not requiring nutrition information for single-ingredient, raw meat and poultry products that are not major cuts and that are not ground or chopped. But, if nutrition information is provided for these products, it must be provided in accordance with the nutrition labeling requirements for the major cuts. Therefore, under the final rule, if establishments or retail facilities choose to provide nutrition information for these products, they will either provide it at point-of-purchase, in accordance with § 317.345 or § 381.445, or on their label, in accordance with § 317.309 or § 381.409. Thus, the nutrition labeling provisions for these products will be consistent with those for the voluntary nutrition labeling program.

Permitting Percent Lean Statements on labels or in labeling of ground or chopped products: The final rule permits a statement of lean percentage on the label or in labeling of ground or chopped meat and poultry products that do not meet the regulatory criteria for "low fat," provided that a statement of the fat percentage is also displayed on the label or in labeling. The required statement of fat percentage must be contiguous to, in lettering of the same color, size, and type as, and on the same color background as, the statement of lean percentage. Many consumers have become accustomed to this labeling on ground beef products, and FSIS has concluded that this labeling provides a quick, simple, and accurate means of comparing ground or chopped meat and poultry products.

Exemptions: Under this final rule, the following exemptions from nutrition labeling requirements will apply to the major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products:

- Products intended for further processing, provided that the labels for these products bear no nutrition claim or nutrition information,
- Products that are not for sale to consumers, provided that the labels for these products bear no nutrition claims or nutrition information,
- Products in small packages that are individually wrapped packages of less than ½; ounce net weight, provided that the labels for these products bear no nutrition claims or nutrition information,
- Products that are custom slaughtered or prepared, and
- Products intended for export.

This final rule also provides the following additional exemptions for ground or chopped products:

- Ground or chopped products that qualify for the small business exemption in §§ 317.400(a)(1) and 381.500(a)(1),
- Products that are ground or chopped at an individual customer's request and that are prepared and served at retail, provided that the labels or labeling of these products bears no nutrition claims or nutrition information,
- Ground or chopped products in packages that have a total surface area for labeling of less than 12 square inches, provided that the product's labeling includes no nutrition claims or

nutrition information and provided that an address or telephone number that a consumer can use to obtain the required information is included on the label, and

• Ground products produced by small businesses that use statements of percent fat and percent lean on the label or in labeling of ground products, provided they include no other nutrition claims or nutrition information on the product labels or labeling.

FSIS believes an exemption for ground or chopped products produced by small businesses is necessary because the burden of mandatory nutrition labeling may force some small firms to stop producing the product because of the cost of nutrition labeling and eventually force some small firms out of business. FSIS believes it would not be feasible for some small businesses to incur the additional costs of nutrition labeling because of their low volume of sales or low volume of ground product. FSIS believes it is feasible for larger businesses to incur the additional costs of nutrition labeling because of their higher volume of sales or larger levels of production of ground product. This final rule, with an exemption for ground or chopped products that qualify for the small business exemption in §§ 317.400(a)(1) and 381.500(a)(1), provides nutrition labeling on the maximum volume of ground or chopped product while assuring that small businesses producing low volumes of product are not at risk of going out of business or materially reducing the variety of products they deliver to their customers. Further, FSIS believes that the relatively small additional benefits of requiring small businesses to put nutrition labels on all ground or chopped products are outweighed by the larger additional costs. FSIS estimates that without the exemption there would be a $3 million reduction in annual average net benefit. Without the exemption, the projected compliance average total cost increase annually of $54 million would not be the only type of cost that would be incurred. FSIS believes that without the exemption many small businesses would have to close or substantially reduce the variety of products they now offer. Reductions in purchase options would be a cost to consumers that could not be quantified for FSIS's analysis.

Under this final rule, there is not a small business exemption for the major cuts of single-ingredient, raw meat and poultry products because nutrition information for these products may be provided on labels or, alternatively, at their point-of-purchase. Additionally, FSIS will make point-of-purchase materials available over the Internet free of charge. Therefore, the nutrition labeling requirement for major cuts of single-ingredient, raw products should not impose an economic hardship for small businesses, including those that are retail stores.

Under the proposed rule, if small businesses produced ground or chopped product and included a statement of lean percentage and fat percentage on the product's label, the small business would have been required to include nutrition information on the product label. These small businesses would not have qualified for the small business exemption because the labels for these products included nutrition claims. Based on the National Cattleman's Beef Association (NCBA) National Meat Case Study in 2004, 93 percent of ground beef packages had statements of lean or fat percentages (74 FR 67741). Sixty-eight percent of packages with such statements had nutrition facts panels and 25 percent did not (74 FR 67741). Because about 95 percent of grinders are small businesses, FSIS concluded that many of the 25 percent of packages that included lean or fat percentage statements without nutrition facts panels were produced by small businesses. Therefore, FSIS believes many small businesses include statements of lean or fat percentage on the label of their ground products but not the nutrition facts panel. Also, because of the longstanding use of the statements of percent fat and percent lean on the label or in labeling of ground beef and hamburger products, FSIS believes that such statements on the label or in labeling of ground products produced by small businesses will not mislead consumers, even if the small businesses do not include nutrition information on the products' labels (74 FR 67741). Many consumers have become accustomed to this labeling on ground beef products, and FSIS believes that this labeling provides a quick, simple, and accurate means of comparing ground or chopped meat and poultry products. Therefore under the final rule, small businesses that use statements of percent fat and percent lean on the label of ground products, provided they include no other nutrition claims or nutrition information on the product labels or labeling, are exempted from the nutrition labeling requirements.

Additionally, under this final rule, any ground or chopped product or major cut of single-ingredient, raw product represented or purported to be specifically for infants and children less than 4 years of age will not be allowed to include certain nutrient content declarations because infants and children less than 4 years of age have different nutrition needs than adults and children older than 4 years of age.

Finally, this final rule makes clear that the current regulatory exemptions for ready-to-eat (RTE) product packaged or portioned at retail and multi-ingredient product processed at retail do not apply to RTE ground or chopped products packaged or portioned at retail or multi-ingredient ground or chopped products that are processed at retail because there may be a significant amount of multi-ingredient ground beef retail processed products or RTE retail packaged products (66 FR 4979, January 18, 2001). For further explanation of the reasons for the foregoing exemptions, *see* 58 FR 638–639; 66 FR 4978–4979; and 75 FR 67740–67741.

Enforcement and Compliance: After the final rule is implemented, FSIS will collect samples of ground product at retail for nutrient analysis. In addition, FSIS will assess whether nutrition information is available for the major cuts, either on package labels or at the point-of-purchase.

Under this final rule, the procedures set forth for FSIS product sampling and nutrient analysis in §§ 317.309(h)(1)–(8) and 381.409(h)(1)–(8) will be applicable to ground or chopped meat and to ground or chopped poultry products, respectively. FSIS will sample and conduct nutrient analysis of ground or chopped products to verify compliance with nutrition labeling requirements, even if nutrition labeling on these products is based on the most current representative database values contained in USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference and there are no claims on the labeling. Therefore, FSIS will treat these products as it treats other products required to bear nutrition labels.

FSIS will treat ground or chopped products in this way because the fat content of these products can vary significantly. FSIS employees cannot visually assess whether nutrition information on the label of ground or chopped products accurately reflects the labeled products' contents because, in most cases, it is not possible to visually assess the level of fat in a ground or chopped product.

If nutrition labeling of the major cuts of single-ingredient, raw products (other than ground beef or ground pork) is based on USDA's National Nutrient Data Bank or the USDA's National Nutrient Database for Standard Reference, and there are no nutrition claims on the labeling, FSIS will not sample and

conduct a nutrient analysis of the products because FSIS personnel can visually identify the particular cut. If the nutrition information for these products is based on USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference, and there are no nutrition claims on the labeling, it is not necessary for FSIS to verify the accuracy of the data because they are USDA data. USDA has already evaluated these data and determined that they are valid (66 FR 4980, January 18, 2001).

Outreach: FSIS personnel will conduct meetings and Webinars on the final rule and will provide additional information and guidance as needed. If retailers cannot obtain point-of-purchase materials over the Internet, FSIS personnel will have copies of the information to provide to retailers.

Six months prior to the effective date, FSIS intends to make available nutrition labeling materials that can be used at the point-of-purchase of the major cuts at the following Internet address: *http://www.fsis.usda.gov.* Also, the Food Marketing Institute (FMI) has made available materials that can be used at the point-of-purchase at the following Internet address: *http://www.fmi.org/consumer/nutrifacts/.*

In addition, the USDA National Nutrient Database for Standard Reference is developed and maintained by the Agricultural Research Service (ARS) and can be found on the Internet at the following address: *http://www.ars.usda.gov\nutrientdata.* Information is available at this site for ground beef products containing 5%, 10%, 15%, 20%, 25%, and 30% fat. In addition, ARS has included a calculator on the Internet, with the Database. Parties can enter the amount of fat (5% to 30% percent fat) or lean (70% to 95% lean) in a particular raw ground beef product, and the calculator will calculate the nutrient values for the product based on the fat value entered.

The USDA National Nutrient Database for Standard Reference also includes a set of tables with nutrient values for ground pork with fat levels from 4% to 28%, in one percent increments. The USDA Nutrient Database also includes nutrient values for raw and cooked ground chicken but does not include nutrient values for such product at varying fat levels. ARS also has published nutrient values for ground turkey with fat levels of 0%, 7%, and 15%. In the supplemental proposed rule, FSIS provided examples of nutrition labels for ground or chopped products that would meet the requirements of the final rule (74 FR 67742). Six months prior to the effective date, FSIS will make additional examples of acceptable labels for such products available on the Agency's Web site.

Effective Dates: The requirements for ground or chopped products will become effective on January 1, 2012. FSIS issued a final rule to establish this date as the uniform compliance date for new food labeling regulations that are issued between January 1, 2009, and December 31, 2010 (73 FR 75564; December 12, 2008). FSIS established the uniform compliance date to minimize costs associated with on-package labels. Because this final rule allows for the presentation of nutrition information for the major cuts of single-ingredient, raw meat and poultry products at their point-of-purchase, no change in on-package labels will be necessary to effect this aspect of this final rule. Thus, in the supplemental proposed rule, FSIS proposed that the labeling requirements for the major cuts would be effective one year from the date of publication of the final rule. Because one year from the date of publication will only be a few days before the effective date for ground and chopped products, January 1, 2012, FSIS is also establishing January 1, 2012 as the effective date for the labeling requirements for the major cuts.

Summary of and Response to Comments

FSIS received 33 comments on the supplemental proposed rule from individuals, a consumer organization, members of the regulated industry, trade and professional associations, and a city health department.

A summary of issues raised by commenters and the Agency responses follows.

Nutrition Labeling for the Major Cuts of Single-Ingredient, Raw Meat and Poultry Products

Comment: Many individuals, several trade associations, a city health department, a perishable items tracking company, and an industry commenter all generally supported required nutrition information for the major cuts, either on their label or at their point-of-purchase. Several individuals and the city health department stated that providing this nutrition information will help consumers make healthier, informed food choices and will allow them to monitor the amount of fat, cholesterol, and sodium that they consume. According to the city health department, cardiovascular disease, diabetes, and cancer are the leading causes of death, disability, and compromised quality of life in the United States. This commenter also argued that these illnesses are connected with nutrition, and improved access to nutrition information through nutrition labeling can help people reduce their risk of developing these illnesses. A trade association stated that nutrition labeling allows consumers to quickly differentiate between meat products and identify leaner choices. One individual stated that many people need to check the specific nutritional content of foods for medical reasons.

One individual stated that most retailers do not participate in the voluntary nutrition labeling program at a significant level because the program is voluntary.

A consumer organization, a city health department, and an individual supported the proposed rule but argued that the final rule should mandate that nutrition information for major cuts of meat be provided through on-package labels rather than point-of-purchase materials. These commenters stated that on-package labeling helps people make more informed decisions. The consumer organization noted that a recent telephone survey showed an overwhelming percentage (86%) of the respondents preferred nutrition facts labels on meat packages rather than nutrition information on wall posters or signs. The city health department and the consumer organization argued that point-of-purchase materials are not an effective means of communication because their success depends on external factors, such as the retailer's placement of the point-of-purchase materials and layout limitations in small stores. The consumer organization and one individual stated that some of the disadvantages to using point-of-purchase materials are that they are hard to find, inconvenient to use, and difficult to read and comprehend. One individual also believed it was time-consuming and embarrassing for shoppers to read posters regarding nutrition information. Another individual stated that on-package labeling allows consumers to quickly compare products and provides the nutrition information to other consumers at home.

The consumer organization stated that point-of-purchase materials are not subject to any formal requirements under the supplemental rule. The consumer organization stated that FSIS should specify format and placement requirements for point-of-purchase materials. This organization stated that the USDA should work with the FDA to update format and readability requirements for posters. This organization believed that posters are

likely to omit many cuts or give them a different name than what appears on the package. The organization also stated that USDA should conduct a survey to determine whether consumers are better served by on-package nutrition labels than point-of-purchase materials. According to this consumer organization, many companies and grocery chains already use on-package nutrition labeling. Additionally, the consumer organization stated that if similar nutrition labels and labeling equipment are required for ground products, then retailers would not incur substantial additional costs by adding nutrition labels to major cuts.

The consumer organization disagreed with FSIS's position that consumers can visually determine the difference in fat content between various cuts. This organization noted that a recent telephone survey showed an overwhelming percentage (80%) of respondents could not determine which cuts of meat had the least amount of fat. The consumer organization suggested that the USDA does not have any data to support its assumption that consumers can visually determine the difference in fat content between various cuts.

Several trade associations, an industry commenter, and the food marketing organization supported the option of providing nutrition information for the major cuts through point-of-purchase materials. According to one trade association, their retailer customers believe nutrition labeling for meat is more efficiently displayed via point-of-purchase materials than on the product.

Response: As FSIS proposed, this final rule will require that nutrition information be provided for the major cuts of single-ingredient, raw meat and poultry products, either on the label or at the point-of-purchase. FSIS agrees that the final rule will produce health benefits, including projected reductions in the incidence of coronary heart disease and three types of cancer that may accrue as consumers improve their diet quality through increased use of nutrition information generated by the final rule.

FSIS agrees with the individual that stated that most retailers do not participate at a significant level when labeling is voluntary. In the two most recent surveys from 1996 and 1999, FSIS found that significant participation in the voluntary nutrition labeling program did not exist (*see* 66 FR 4973, January 18, 2001; 74 FR 67736–67737, December 18, 2009). In addition, since the surveys were conducted, FSIS's LPDD has not seen an increase in the number of labels that include nutrition information for the major cuts of single-ingredient, raw meat and poultry products. Further, FSIS's OPEER also has not seen an increase in the number of packages of the major cuts of single-ingredient, raw meat and poultry products that have nutrition facts panels on their labels at retail or an increase in the availability of point-of-purchase materials that provide nutrition information for such products at retail since the last compliance surveys were conducted. These observations do not constitute survey data but provide additional meaningful information based on the experience of FSIS's LPDD and OPEER. No evidence has been submitted to FSIS that significant participation in the voluntary program now exists.

FSIS agrees that many consumers cannot accurately assess the nutritional content of the major cuts of single-ingredient, raw products; however, we continue to believe that point-of-purchase nutritional information is appropriate for these products.

While consumers cannot accurately assess the nutritional content of the major cuts of single-ingredient, raw products, their ability to do so is greater than in the case of ground products. Ground products are processed in such a way that fat content is very difficult to visually ascertain. Internal marbling, attached fat, and whether the product has skin gives consumers some rough indication of the fat content of the major cuts of single-ingredient, raw products, which leads FSIS to believe that the benefits of on-package labeling may be slightly less than with ground product. FSIS notes, however, that consumers still need nutrition information on point-of-purchase materials for the major cuts because consumers cannot assess precise levels of fat (*e.g.,* 10 grams vs. 20 grams of fat per serving) and cannot know the levels of calories or other specific nutrients, such as saturated fat, in these products.

Based on comments received and the Supplemental Proposed Rule Regulatory Impact Analysis, FSIS believes that requiring on-package labeling for the major cuts of single-ingredient, raw products is also likely to be significantly more costly than for ground products because it would require on-package labeling on a larger volume of product. In the Supplemental Proposed Rule Regulatory Impact Analysis, FSIS estimated that the annualized average present value of the costs of requiring nutrition labels on the major cuts of single-ingredient, raw meat and poultry products would be $16.48 million more than the annualized average present value of the costs of requiring nutrition labels on all ground or chopped products, without taking into account the current level of voluntary compliance (74 FR 67789).

As discussed in the proposed rule and in the supplemental proposed rule, FSIS believes it will be relatively easy to prepare point-of-purchase materials for the major cuts because the nutrient content of a given major cut is relatively uniform across the market, and these products are not formulated in the manner of ground or chopped products (66 FR 4974, January 18, 2001) (74 FR 67737, December 18, 2009). To ensure that this is the case, FSIS is making available nutrition labeling materials that can be used at point-of-purchase over the Internet free of charge.

FSIS acknowledges the concern expressed by an individual and by the consumer organization about the location of point-of-purchase materials, but believes that it is currently addressed in the regulations (9 CFR 317.345(a)(3) and 381.445(a)(3)) which require that point-of-purchase materials be made available in close proximity to the food. In addition, FSIS personnel will also visit stores to verify that they are following this and the other requirements.

In response to the comment that noted that an advantage of including nutrition information on the label is that consumers can review the nutrient content of the product once the product is taken home, and that others besides the primary food purchaser would have better access to this information, surveys, including the Diet and Health Knowledge Survey (DHKS), show that a majority of individuals report using labels while buying foods. Although the DHKS shows that adults who are not main household shoppers use labels, the survey shows that the main shoppers use labels at a higher rate than those who are not main household shoppers. If individuals in a household have certain nutrition practices and needs, the person who purchases food for the household would likely take other household members' needs and preferences into account. In this case, the entire household would ultimately receive the benefits of the nutrition information. Further, other household members besides the primary food purchaser will be able to obtain nutrition information for the major cuts on the Internet on FSIS's Web site, ARS's Web site, and FMI's Web site.

FSIS agrees that consumers cannot accurately judge the nutritional content of the major cuts of single-ingredient, raw products, and that the mandatory provision of this information to consumers is warranted and

appropriate. However, for the reasons described above, we believe that point-of-purchase information is appropriate for these products.

Comment: Several individuals and trade associations, one food marketing organization, and an industry commenter opposed the proposed rule to require nutrition information for the major cuts, either on their label or at their point-of-purchase. These trade associations and the food marketing organization stated that FSIS should maintain its existing voluntary program. One trade association and the food marketing organization advocated that the USDA should conduct a new compliance survey because it is likely that the level of participation in the voluntary nutrition labeling program has increased beyond the "significant participation" threshold because of changes in the composition of the retail sector over the past decade, and because of efforts by FMI to encourage the widespread use and dissemination of Nutri-Facts materials. These organizations stated that the last USDA survey for compliance is outdated because it was conducted in 1999, and should not be the basis for promulgating the rule. The food marketing organization noted that the regulations that require FSIS to evaluate the level of participation in the voluntary nutrition labeling program every two years remain in effect. One trade association stated that maintaining the voluntary program will be less costly and will help the industry. According to this trade association, FSIS could increase voluntary compliance by making the same updated nutrition information available free of charge to retailers as it planned to make available under the proposed rule. Several trade associations stated that if individual consumers wanted more specific nutrition information about a particular product, they could access it through other sources like the Internet. An industry commenter noted that if there was sufficient consumer demand for more nutrition information, then retailers would have an economic incentive to voluntarily supply it.

One trade association did not agree with FSIS's position that major cuts of single-ingredient raw, meat and poultry products that do not bear nutrition information on their labels or on point-of-purchase materials are misbranded. Another trade association believed that there were few significant differences in the nutritional values among the various brands of young chicken, and that nutrition information for single-ingredient chicken is not that useful because most people add ingredients to it during cooking that alter the calories, fat, and protein. For those reasons, the poultry trade association stated that there is no need to mandate nutrition labeling for the major cuts, and FSIS should maintain its existing voluntary nutrition labeling program for the major cuts. Several individuals stated that consumers already have a general idea of the average nutritional value of major cuts of meat and poultry products.

Response: FSIS encouraged participation in the voluntary nutrition labeling program through meetings with industry. Additionally, nutrition labeling materials for the major cuts have been available on FMI's Web site for several years (*http://www.fmi.org*). Despite this, and FSIS's encouragement of the use of such materials, the 1999 voluntary nutrition labeling survey found a lower rate of participation than the 1996 survey found. Thus, the fact that nutrition information was available was insufficient to ensure that consumers received this necessary nutrition information. By making the guidelines for the voluntary nutrition labeling program mandatory, FSIS will ensure that consumers are provided with sufficient information to assess the nutrient content of the major cuts and enable them to select foods that fit into a healthy diet that meets their individual needs.

FSIS's regulations provide that the Agency would evaluate significant participation every 2 years (§§ 317.343(e) and 381.443(e)). Although FSIS did not conduct the surveys precisely 2 years apart, the Agency did conduct the surveys approximately every two years until 1999 (74 FR 67748, December 18, 2009), and the surveys failed to show significant participation. Because significant participation did not exist, FSIS proceeded with rulemaking.

Under § 317.4, FSIS's LPDD reviews labels on meat and poultry products that have been submitted for approval. Based on its label review, FSIS has not seen an increase in nutrition labeling of the major cuts of single-ingredient raw, meat and poultry products since the surveys were conducted. Compliance investigators in FSIS's OPEER also have not seen an increase in the number of packages of the major cuts of single-ingredient, raw meat and poultry products that have nutrition facts panels on their labels at retail or an increase in the availability of point-of-purchase materials that provide nutrition information for such products at retail since the last compliance surveys were conducted. Because (i) the most recent surveys showed that significant participation in the voluntary nutrition labeling program did not exist, (ii) FSIS's LPDD has not seen an increase in nutrition labeling of the major cuts of single-ingredient raw, meat and poultry products and ground or chopped meat and poultry products since the surveys were conducted, (iii) FSIS's OPPER has not seen an increase in nutrition labeling of the major cuts of single-ingredient raw, meat and poultry products at retail or an increase in the availability of point-of-purchase materials that provide nutrition information for the major cuts at retail since the last compliance surveys were conducted, and (iv) no other evidence has been submitted to FSIS that significant participation in the voluntary program now exists, FSIS has concluded that this final rule is necessary.

In response to the comment that maintaining the voluntary program will be less costly and will help the industry, this final rule makes the guidelines for the voluntary nutrition labeling program mandatory, so the costs for the industry should not increase for stores that are following the guidelines.

In response to the statement that if there was sufficient consumer demand for more nutrition information, then retailers would have an economic incentive to voluntarily supply it, market forces have not been great enough to ensure significant participation in the voluntary nutrition labeling program. This fact could be evidence that consumers are not willing to pay for this information. However, as is explained above, FSIS believes that consumers can generally estimate the fat content of the major cuts of meat and poultry products, but nonetheless, they need more precise information about the nutrient content of the major cuts in order to make a fully informed comparative judgment about the various cuts.

FSIS has concluded that without nutrition information for the major cuts of single-ingredient, raw meat and poultry products, these products will be misbranded under the FMIA and the PPIA (21 U.S.C. 601(n)(1) and 453 (h)(1)). Without nutrition information on their labeling, FSIS has concluded that the labeling of these products will be false or misleading because it will not provide consumers with sufficient information to assess the nutrient content of the major cuts and will not enable consumers to select major cuts that fit into a healthy diet that meets their individual needs.

In response to the comment that nutrition information for single-ingredient chicken is not that useful because most people add ingredients to

it during cooking that alter the calories, fat, and protein, the final rule allows nutrition information to be declared on either an "as packaged" basis or an "as consumed" basis. The point-of-purchase materials and the labels clearly inform consumers whether the nutrition information provided is "as packaged" or "as consumed." Consistent with the provisions in the voluntary nutrition labeling program, when nutrition information is presented on an "as consumed" basis, retailers or manufacturers will be required to specify a method of cooking that will not add nutrients from other ingredients such as flour, breading, and salt (§§ 317.345(d) and 381.445(d)).

Comment: Several trade associations asserted that the list of major cuts needs to be updated. One trade association stated that, according to The National Pork Board meat scanner data, pork whole loin, pork shoulder picnic, pork shoulder Boston butt, pork sirloin chop, pork center chop, and pork rib roast should be added to the list of major cuts. One trade association stated that FSIS should review the list of major cuts based on market share and availability because there are still cuts on the list of major cuts for which data reflective of trim levels sold at retail is not currently available. One trade association was concerned that if the USDA does not update the list, but rather makes a change to the list later, then retailers will incur the $5.67 million cost to purchase and install posters again.

Response: Because FSIS did not propose to amend the codified list of major cuts in the regulations and did not provide an opportunity for the public to comment on proposed changes to the list, FSIS is not amending the list of major cuts in the regulations at this time. FSIS acknowledges that the codified list of major cuts may need to be updated. FSIS intends to assess the need to update the list and to update it as necessary when resources permit. Establishments or retail facilities may choose to provide nutrition information for the non-major cuts, either at point-of-purchase, in accordance with § 317.345 or § 381.445, or on their label, in accordance with § 317.309 or § 381.409.

Comment: The consumer organization argued that the number of servings should be required on all major cuts. This organization stated that many retailers now have the ability to calculate the number of servings in a package. As an example, this organization suggested that companies could determine the number of servings for the major cuts based on the number of pieces of meat in the package and their average weights. According to this organization, the number of servings reminds consumers that a package has multiple servings, and that if someone eats more than one serving, the nutrients consumed will increase. This commenter stated that most consumers eat more than the USDA standard serving size of 4 oz. of meat or poultry, and single-serving packages of meat or poultry contain more than 4 oz. This commenter also stated that nutrition facts should be provided for the entire package if the single serving package exceeds 4 oz. Alternatively, the commenter stated that the package should be required to include a disclaimer such as: "Nutrition Facts are based on a 4 oz. serving. This package may contain a serving larger than 4 oz." Finally, the commenter stated that the USDA also needs to update its standard serving size upward to reflect actual consumption.

Response: The number of servings per container is not necessary information on the nutrition labels or point-of-purchase materials of the major cuts or non-major cuts of single-ingredient, raw products because these products are typically random weight products. For multi-ingredient and heat-processed products that must bear nutrition labels, the number of servings is not required on random weight products because the weight statement is applied at retail. The weight of such products varies from package to package (§§ 317.309(b)(10)(iii), 381.409(b)(10)(iii), 317.2(h)(9) and 381.121(c)(9)) (74 FR 67747, December 18, 2009).

The request to change and update USDA's standard serving size is outside the scope of this regulation.

Comment: One individual and a trade association were concerned that consumers would not understand that the nutrition information for the major cuts will be based on averages of nutrient content data for that cut of meat or poultry. The trade association questioned whether there should be an explanation on the package regarding the potential variation from the average, so consumers will not be misled. The individual suggested that there should be a disclaimer on the label regarding the potential variation from the average.

Response: FSIS does not believe an explanation regarding potential variability of nutrition information is necessary for single-ingredient cuts. All nutrition information is based on average values. Compliance requirements in 9 CFR 317.309 and 381.409 allow for a twenty percent variation before regulatory action is taken against products.

Comment: The consumer organization stated that nutrition facts should be provided on an "as packaged" basis rather than on an "as consumed basis" because consumers may alter the product in ways that could affect the nutrient content before eating.

Response: As proposed, for the major cuts and non-major cuts of single-ingredient, raw products, this final rule will allow nutrition information on the label or on point-of-purchase materials to be declared on either an "as packaged" basis or an "as consumed" basis because most of these products will not be subject to FSIS nutrient analysis. If nutrition information for these products is based on USDA's National Nutrient Database for Standard Reference, and there are no claims on the labeling, FSIS will not conduct a nutrient analysis of these raw products and, therefore, will not evaluate "as packaged" nutrition labeling information for these products. Consistent with the provisions in the voluntary nutrition labeling program, when nutrition information is presented on an "as consumed" basis, retailers or manufacturers will be required to specify a method of cooking that will not add nutrients from other ingredients such as flour, breading, and salt (§§ 317.345(d) and 381.445(d)) (74 FR 67747, December 18, 2009).

Mandatory Nutrition Labeling for Ground or Chopped Products

Comment: Many individuals, several trade associations, a city health department, an industry commenter, and a perishable items tracking company supported mandatory on-package nutrition labeling for ground or chopped products. Several of those trade associations and the city health department specifically supported FSIS's proposal to require on-package labeling as opposed to allowing for nutrition information at point-of-purchase. One of these trade associations stated that on-package labeling is needed because fat content is difficult to see in ground products. Two of the trade associations noted that plants produce ground meats at specific lean/fat ratios, and that the amount of fat is easy to control. One trade association stated that plants provide nutritional data to retailers, and that data can easily be added to a nutrition facts panel.

Two trade associations and the city health department believed that on-package labeling is the most beneficial for consumers. One of the trade associations questioned whether consumers actually use point-of-purchase materials for ground or

chopped products and questioned the feasibility of developing point-of-purchase materials for such products. The city health department argued that point-of-purchase materials for ground or chopped products are not an effective means of communication because their success depends on external factors such as the retailer's placement of the point-of-purchase materials and layout limitations in small stores. One trade association stated that point-of-purchase materials increase redundancy and cost because most retailers have nutrition data that can be easily distributed among retailers and added to a nutrition facts panel.

Several trade associations and the food marketing organization supported the option to provide nutrition information for ground and chopped products at point-of-purchase. One of the trade associations believed that point-of-purchase materials allow consumers to make more informed choices concerning the purchase of ground or chopped products because they are consistently displayed and more efficient than on-package labeling. This commenter stated that retailers are limited because of the small number of meat case staff and the available space on ground or chopped product packages. According to the food marketing organization, point-of-purchase materials allow consumers to easily compare products. The organization also was concerned that consumers would not be able to visually inspect the product because of the large label required to be able to list the nutrition information, food safety information, and cooking instructions. This organization also suggested that important food safety information would not be as prominent once nutrition information is added to the label.

One trade association and the food marketing organization asserted that allowing the use of point-of-purchase materials will reduce the financial burden on retailers and benefit consumers. These commenters stated that FSIS underestimated the cost of providing nutrition labels on ground and chopped products. According to these commenters, FSIS did not account for the number of retailers that would have to buy new printer or scale systems at the store level. Additionally, one trade association stated that retailers that provide on-site custom services would have to increase prices or only sell case-ready meat because of the increased costs. The food marketing organization was concerned that retailers may be forced to eliminate some of their product choices because of the cost of testing and verifying the nutrient values for each nutrition label.

The food marketing organization claimed that effective point-of-purchase materials for ground and chopped products could be developed. One trade association suggested that there could be standardized posters for other ground or chopped products, similar to the ones currently used for ground beef. An industry commenter noted that producers supply retailers with ground products based on established finished lean/fat ratios, which do not differ among retailers. The industry commenter suggested that nutrition information for these lean/fat ratios could be used on point-of-purchase materials, and consumers could match the lean/fat ratio on their ground product with the nutrition information for that lean/fat ratio on the point-of-purchase materials. The commenter also stated that if a retailer uses a different lean/fat ratio than is provided on the point-of-purchase materials, it would have to put the nutrition information on the individual package.

A trade association, an industry commenter, and the food marketing organization stated that FSIS should maintain its existing voluntary program for nutrition labeling of ground or chopped products. The food marketing organization believed that there was no need to require mandatory on-package labeling for ground and chopped products.

Response: FSIS will require on-package nutrition information for these products rather than allowing nutrition information to be provided at their point-of-purchase for the reasons stated above. Because there are numerous formulations of ground or chopped products, as a practical matter, it would be difficult for producers or retailers to develop point-of-purchase materials that would address all the different formulations that exist for these products. Furthermore, it would be difficult for consumers to find the correct information for a specific ground or chopped product on point-of-purchase materials that include information concerning numerous formulations of these products (66 FR 4977, January 18, 2001). If a statement of the fat percentage and lean percentage is not included on a package of ground product, consumers would not know which nutrient data concerning ground product on point-of-purchase materials would apply to that particular ground product. Establishments and retailers are not required to provide such a statement and will not be required to provide such a statement when this rule becomes effective (74 FR 67750, December 18, 2009).

Information concerning the nutritional qualities of ground or chopped meat and poultry products is particularly important because these products, especially ground beef, are widely consumed. Based on a Beef Sales Survey at retail markets in the United States over 52 weeks ending March 23, 2010, ground beef sales were about $5.6 billion for about 2.1 billion pounds, excluding the "other" category of ground beef for chili, meatloaf, meat balls, and trim (source: FreshLook Marketing, available at *http://beefretail.org/GroundBeefCategoryBreakdown.aspx*). According to the summary of results on the National Cattleman's Beef Association Web site, ground beef accounts for about 66 percent of all fresh beef eatings (servings) in-home (source: NPD National Eating Trends (NET) Research, Two Years Rolling August 2009, *available at http://beefretail.org/individualpenetrationbybeefcut.aspx*). Additional information about the nutrient values of ground or chopped meat and poultry products will enable consumers to make informed decisions about including these products in their diets and will, therefore, help consumers to construct healthy diets (74 FR 67750, December 18, 2009).

Thus, this final rule will require nutrition labels on all ground or chopped meat and poultry products, with or without added seasonings, unless an exemption applies. These products are similar to multi-ingredient products in the mandatory nutrition labeling program (which requires nutrition information to be on the label of individual packages). Just as producers can control the incoming ingredients and levels of such ingredients in multi-ingredient products, producers can precisely control the fat content of ground or chopped products to obtain the desired product. In addition, just as consumers cannot often see all the ingredients in multi-ingredient products, consumers cannot easily see the fat in ground or chopped products. The fat is uniformly distributed throughout the product and is not clearly distinguishable on the surface of the product. Therefore, consumers cannot estimate the fat levels in these products and cannot compare the fat levels in these products to those in other products. Thus, it is difficult for consumers to have a reasonable understanding of the nutritional quality of these products (74 FR 67750, December 18, 2009).

Many grocers and manufacturers provide nutrition facts panels on ground

beef products. Therefore, FSIS questions why certain commenters stated that there is not sufficient room on the label of these products for nutrition information (74 FR 67750, December 18, 2009). FSIS disagrees with the comment that consumers will not be able to visually inspect the product because of the large label required to list the nutrition information, food safety information, and cooking instructions. As with the Safe Handling Instructions (SHI) and cooking instructions, nutrition labeling information can appear off the principal display panel (PDP). Many retailers place SHI on the bottom or side panels of packages to allow consumers to visually inspect the largest amount of product. There should be sufficient space available on these panels for nutrition facts information to appear off the PDP.

Additionally, the nutrition labeling requirements for ground or chopped products should not be particularly difficult for small operations, since ground or chopped product produced by retail establishments and Federal establishments that meet specific small business criteria will be exempt from nutrition labeling requirements (§§ 317.400(a)(1) and 381.500(a)(1)) (74 FR 67750, December 18, 2009).

Moreover, an exemption from the nutrition labeling requirements, which is provided in this final rule, should alleviate any concerns that nutrition labeling requirements will discourage retailers from grinding product based on customers' requests. This final rule provides an exemption from nutrition labeling requirements for ground or chopped products that are ground or chopped at an individual customer's request and that are prepared and served or sold at retail, provided that the labels or labeling of these products bear no nutrition claims or nutrition information (74 FR 67750, December 18, 2009).

If a customer selects an intact product for purchase and requests that the product be ground at the retail facility, FSIS has determined that nutrition information on the package of the ground product would not be necessary. In this instance, the customer has made the decision to purchase the product before it was ground. The customer is not selecting the product from among various, formulated, ground or chopped product, and thus the reasons for requiring a nutrition label on such a product would not be applicable here (74 FR 67750, December 18, 2009). Moreover, the product selected may already be the subject of nutrition labeling as a raw, single ingredient product.

Many of the suppliers of coarse ground products that are then ground and packaged at retail have supplied, or can supply, the nutrition facts panels for the retailers. Most retailers offer a limited selection of ground beef products. Thus, dozens of different nutrition labels for each retailer will not be necessary. In addition, information for ground beef and other products is available through the National Nutrient Database for Standard Reference. Finally, the requirements for on-package nutrition labeling for ground or chopped products will not be effective until January 1, 2012 (74 FR 67753, December 18, 2009).

In response to the comments that FSIS underestimated the costs of developing and providing nutrition labels for ground and chopped products, FSIS does not believe that it has underestimated the costs. Since the Supplemental Proposed Rule Regulatory Impact Analysis was done, the total costs of labeling may have even decreased because of more cost-effective technology, such as less expensive computerized flexography and scale-label printers. The additional costs of labeling would be relatively low for the affected businesses. In addition, this final rule exempts small businesses that produce ground or chopped product from nutrition labeling requirements.

Comment: The consumer organization argued that nutrition labels for ground meats should list the number of servings in the package. In the alternative, the commenter stated that the package should be required to include a disclaimer such as: "Nutrition Facts are based on a 4 oz. serving. This package may contain two or more servings, some or all of which exceed 4 oz."

Response: As discussed above, FSIS is not requiring that the number of servings per container be declared for the major cuts of single-ingredient, raw meat and poultry products because all of these products are random weight products, and the number of servings is not required on random weight products (*see* §§ 317.309(b)(10)(iii) and 381.409(b)(10)(iii)) (66 FR 4974, January 18, 2001). FSIS is not requiring that the number of servings per container be declared for ground or chopped meat and poultry products because these are also random weight products. Even though the number of servings per container are not declared on ground or chopped products, FSIS believes that on-package nutrition information is still meaningful to consumers because it is based on a stated serving size and allows consumers to make comparisons among products.

Comment: One trade association opposed requiring nutrition labels on multi-ingredient ground beef retail processed products or ready-to-eat-retail packaged products.

Response: FSIS believes that all ground beef and hamburger products, unless an exemption applies, should be required to include nutrition facts information. If multi-ingredient ground beef products were permitted an exemption, it would encourage firms to add seasoning to ground beef and hamburger products as a way to avoid providing nutrition facts information. Seasonings often include substances, such as salt and sugar, that can significantly alter the nutritional profile. Thus, there is a need for nutrition labeling information on such products.

Comment: One industry commenter noted that there is no significant change in calcium and iron values for finished ground products that contain common industry levels of AMR or low temperature rendered product from that of finished ground products that do not contain these products. This commenter asserted that additional testing should not be required for products that contain AMR or LTR products.

Response: No additional testing will be required for products that contain meat derived from advance meat recovery systems or low temperature rendered products, such as finely textured beef (FTB) or lean finely textured beef (LFTB). 9 CFR 318.24(c) limits the calcium and iron content of meat derived from AMR systems. In comparison, meat trimmings only need a minimum of 12% lean tissue to be considered "meat," and the standard of identity for ground beef and hamburger (9 CFR 319.15(a) and (b), respectively) limit the fat content to no more than 30%. There is also no upper regulatory limit on the use of meat derived from AMR systems or the use of FTB or LFTB in ground beef. Therefore, a wide range of possible formulations for ground beef and hamburger exist that could result in significant differences in the fat content. These facts support the need for nutrition labeling.

Comment: One farmer did not believe FSIS should treat ground or chopped beef as a "single ingredient" product because it normally comes from a large number of animals. According to the commenter, if FSIS continues to treat ground or chopped beef as a "single ingredient" product, then the label should be required to indicate the sources of each and all animals contained in the package.

Response: Ground beef production does typically involve multiple animals. However, all animals are from the same

species. Previous regulations defined certain ground beef products as major cuts of single-ingredient raw products (9 CFR 317.344). FSIS is not re-defining ground beef products that do not include ingredients in addition to ground beef as multi-ingredient products. However, as is explained in this preamble, FSIS considers ground beef products to be formulated products.

No Requirements for Non-Major Cuts

Comment: Several trade associations supported the proposal not to require nutrition labeling on non-major cuts that are not ground or chopped. One of those trade associations questioned whether it would be misleading for consumers to see nutrition information about one product, but no nutrition information on another product within the same retail case. Additionally, one individual and the city health department argued that nutrition labeling should be mandatory for all products, including meat and poultry products.

Response: At this time, FSIS is not requiring that nutrition information be provided for non-major cuts of single-ingredient, raw products that are not ground or chopped. The Agency has concluded that it is not necessary to do so at this time. FSIS stated in the proposed rule that it intended to examine the current state of nutrition labeling for single-ingredient, raw products that are not ground or chopped and that are not considered to be major cuts (66 FR 4974, January 18, 2001). FSIS still intends to conduct this assessment. Once this rule is effective, FSIS will examine and assess the adequacy of the nutrition information provided for the major cuts and will also determine whether and to what extent nutrition information is being made available for the non-major cuts and whether it is necessary to consider a rule requiring such information be provided.

Permitting Percent Lean Statements on Labels or in Labeling of Ground or Chopped Products

Comment: The majority of commenters on this issue supported the proposal to permit the use of the statements of lean percentages on the label or in labeling of ground or chopped products that do not meet the regulatory criteria for "low fat." According to several consumer survey results provided by trade associations, consumers use both lean and fat percentages to determine the type of product to buy. Several trade associations stated that consumers need the lean and fat percentages to quickly determine whether the product is suitable for their needs. An industry commenter and the food marketing organization noted that recipes, child nutrition programs, and health and dietary requirements identify and refer to ground products by their lean percentage. The food marketing organization believed lean statements were complementary, not redundant. A trade association believed that not allowing lean percentage statements will omit key information. According to one trade association, the industry would be unlikely to use only a fat percentage statement because the majority of beef is sold using lean/fat ratios.

One trade association stated that, based on a consumer survey, consumers are not misled by %lean/%fat statements. An industry commenter stated that consumers were confused in 1993 when FSIS's nutrition labeling regulation did not allow %lean to be used on ground products that did not meet the regulatory criteria for "low fat." Also, a trade association noted that %lean/%fat ratios are needed on the label to avoid confusion with %lean claims, which are defined differently and used for other products. Additionally, the food marketing organization argued that consumers may purchase products higher in fat because they would be provided with less information if only "low fat" products could have lean/fat percentages. Moreover, a trade association stated that consumers benefit from consistent labeling and purchasing options.

One individual argued that if lean percentages are maintained, they should follow the fat percentages in a smaller letter size to reduce consumer confusion. Also, the individual noted that this labeling would ensure that people do not focus on only the lean percentage statement without regard to the fat percentage statement. According to this individual, all of the examples of nutrition labels in the **Federal Register** begin with the fat percentage. However, one trade association suggested that the use of %fat/%lean claims be an option for manufacturers, not a regulatory requirement.

A poultry trade association and the consumer organization did not support the use of statements of lean percentages on the label or in labeling of ground or chopped products that do not meet the regulatory criteria for "low fat." These commenters stated that the use of a lean statement is misleading to consumers if the product does not also qualify as "low fat." According to the consumer organization, FSIS's policy would be inconsistent with FDA's policy that prohibits the term "_ percent fat free" on all foods that are not low in fat to prevent consumers from being misled. The trade association stated that FSIS should maintain a consistent policy for use of the phrase "low fat" and similar statements.

One individual and the consumer organization argued that lean percentage statements should not be permitted on labels or labeling of ground or chopped products because they are redundant and misleading. According to the consumer organization and its consumer survey data, percent lean claims are misleading because they imply that the product is low in fat and leaner than other meat and poultry products. This consumer organization noted that the use of fat percent claims with lean percent claims does not prevent consumers from being misled. According to the commenter, consumers cannot compare lean and fat percentage statements on ground products to other food products because only milk products use percent fat statements. This consumer organization believed that if lean percent claims are used, many people will only look at them and will not look at the nutrition facts panel. This consumer organization stated that consumers do not need lean percent claims because they can get all the necessary information from the fat percent claims.

Response: The final regulations permit a statement of lean percentage on the label or in labeling of ground or chopped meat and poultry products that do not meet the regulatory criteria for "low fat." The regulations require that a statement of fat percentage be contiguous to, in lettering of the same color, size, and type as, and on the same color background as, the statement of lean percentage. The regulations permit the use of %lean/%fat statements or %fat/%lean statements on the label or in the labeling of ground or chopped meat and poultry products. (74 FR 67752, December 18, 2009).

Trade associations presented information from consumer surveys that showed that consumers understood the meaning of statements of lean and fat percentages on ground beef and supported the use of these statements. Based on the survey information provided, the majority of consumers believe %lean/%fat designations are important information and use them when choosing which ground beef products to purchase.

Producers, according to industry, have been using lean percentage statements on the labeling of ground beef and hamburger products for over 30 years (59 FR 26917, May 24, 1994).

Because the percent fat statement must be contiguous to the percent lean statement and must be in lettering of the same color, size, and type as, and on the same color background as, the lean percentage statement, FSIS believes that the percent lean statements will not mislead consumers, even if they are used on products that do not qualify as "low fat" under the regulatory criteria (74 FR 67752, December 18, 2009).

Lean/fat ratios allow consumers to readily identify and differentiate between all ground or chopped meat and poultry products and will assist consumers in selecting leaner versions of these products and will provide an incentive for manufacturers to market products lower in fat (66 FR 4972, January 18, 2001).

As one trade association stated, producers may include a percent fat statement on the label or in labeling of ground products without including a percent lean statement, though unlikely. A percent fat statement on ground or chopped products would be an acceptable alternative to a statement of lean and fat percentage. Because of the longstanding use of the statements of percent fat and percent lean on the label or in labeling of ground beef and hamburger products, FSIS believes such statements on the label or in labeling of ground products will not mislead consumers (74 FR 67752, December 18, 2009).

Comment: A trade association and the food marketing organization supported the proposal that small businesses that produce ground or chopped product and include a statement of lean percentage and fat percentage on the product's label or in the labeling would not be required to include nutrition information on the product label, unless they include other nutrition claims or information on the product label. The food marketing organization stated that the flexibility for small businesses should be maintained. Otherwise, according to the commenter, an undue economic hardship on small businesses could result in a competitive disadvantage for small businesses. This food marketing organization also did not believe this proposed exemption from nutrition labeling requirements would mislead consumers.

Several trade associations and an industry commenter stated that nutrition information should be required on the labels of any ground or chopped product for which a lean percentage and a fat percentage statement is provided on the label or in the labeling, regardless of the size of the business making the product. The industry commenter also believed that all ground or chopped products should be labeled with a percent lean statement because consumers need consistent information to compare products and make informed decisions. One trade association argued that there is no need for a small business exemption because small businesses purchase raw materials from larger businesses, which provide nutrition labeling in the proper format for all fat contents of bulk coarse or fine ground products to any store that purchases their products. According to this trade association, the labels are provided for use at point-of-purchase at no cost to the retailer or distributor. Another trade association expressed concern because small businesses can produce a significant quantity of meat and poultry products per year. This trade association believed there should only be exemptions for very, very small companies that receive Federal inspection and market to a local customer base.

Response: This final rule maintains that small businesses that use statements of percent fat and percent lean on the label or in labeling of ground products would be exempt from nutrition labeling requirements, provided they include no other nutrition claims or nutrition information on the product labels or labeling. As discussed in the supplemental proposed rule, based on the National Cattleman's Beef Association (NCBA) National Meat Case Study in 2004, 93 percent of ground beef packages had statements of lean or fat percentages (74 FR 67741). Sixty-eight percent of packages with such statements had nutrition facts panels and 25 percent did not have nutrition facts panels but had lean or fat percentages (74 FR 67741). Seven percent did not have any statements of lean or fat percentages. Because about 95 percent of grinders are small businesses, FSIS concluded that many of the 25 percent of packages that included lean or fat percentage statements without nutrition facts panels were produced by small businesses. Therefore, FSIS believes many small businesses include statements of lean or fat percentage on the label of their ground products but not the nutrition facts panel. Also, because of the longstanding use of the statements of percent fat and percent lean on the label or in labeling of ground beef and hamburger products, FSIS believes that such statements on the label or in labeling of ground products produced by small businesses will not mislead consumers, even if the small businesses do not include nutrition information on the products' labels (74 FR 67741). Many consumers have become accustomed to this labeling on ground beef products, and FSIS believes that this labeling provides a quick, simple, and accurate means of comparing ground or chopped meat and poultry products. Based on the survey information provided, the majority of consumers believe %lean/%fat designations are important information and use them when choosing which ground beef products to purchase. Therefore under the final rule, small businesses that use statements of percent fat and percent lean on the label of ground products, provided they include no other nutrition claims or nutrition information on the product labels or labeling, are exempted from the nutrition labeling requirements.

To qualify for the small business exemption from the nutrition labeling requirements under §§ 317.400(a)(1) and 381.500(a)(1), a meat or poultry product must be produced by a single-plant facility or multi-plant company/firm that employs 500 or fewer people and produces no more than 100,000 pounds of the product annually, provided that the label for the product bears no nutrition claims or nutrition information. In response to the comment that small businesses can produce a significant amount of meat and poultry products per year, if a small business produces more than 100,000 pounds of a particular product, then the small business no longer qualifies for the exemption from nutrition labeling requirements for that product. In connection with the 1993 final rule on nutrition labeling of meat and poultry products, FSIS evaluated several options in establishing a poundage limit for the small business exemption (58 FR 633). Based on that evaluation, FSIS continues to believe that an annual production poundage level of 100,000 pounds sets the limit high enough so that the risk that any small business would have to close would be minimal, and sets the limit low enough so that the maximum volume of total production would bear nutrition labeling (*see* 58 FR 633, 638 for more discussion of the analysis of the poundage limits). The limit on the number of employees at a firm is set at 500 or fewer employees, which is the Small Business Administration's definition of a small meat or poultry processing firm. This approach allows the Small Business Administration to assist in determining which firms would qualify for the small business exemption based on the number of employees (58 FR 638).

Comment: One trade association stated that %lean/%fat claims should

only be allowed on ground products, and that %Lean, Lean, and Extra Lean claims should be applied across all meat and poultry products.

Response: Current regulations address the use of these claims (9 CFR 317.362(b)(6) and 381.462(b)(6)). An exemption is being included for ground species and ground (kind) to allow for the %lean/%fat declarations on ground species and ground (kind) that do not meet the regulatory criteria for "low fat" because of the long and successful history of the use of %lean/%fat declarations in the ground beef industry. The %lean/%fat declaration has been used historically by consumers wishing to make quick purchase decisions based on the fat level of the ground products. However, in most cases the nutrition facts information is necessary for consumers to take into account additional nutrients in formulating healthy diets.

Comment: The consumer organization argued that the USDA should prohibit misleading health and structure/function claims and require that nutrient content claims bear disclosure statements similar to the FDA requirements. This consumer organization also stated that the USDA should create a list of permissible structure/function claims to ensure that they do not undermine the mandatory disclosure of nutrition information.

Response: This comment is outside the scope of the regulation.

Exemptions for Nutrition Labeling

Comment: One individual supported all of the exemptions in the proposed rule because he believed they ensure that the rule will not be unduly burdensome.

One trade association stated that the small business exemption should apply to all products for nutrition labeling purposes because excluding single-ingredient raw products that are not ground or chopped confuses small businesses that have to comply with the different requirements. According to this trade association, small businesses that increase prices in order to provide nutrition facts on the label will be at a disadvantage against their competitors that do not provide the nutrition information on the labels. This commenter supported a small business exemption from the nutrition labeling requirements for the major cuts because of the time necessary for small businesses to access and display the free nutrition information.

One trade association believed the small business exemption pound limit should be increased to 150,000 pounds. According to this trade association, if the limit remains at 100,000 pounds, only retailers who sell fewer than 700 packages of each product a week will be exempt (based on USDA's estimate that the average ground product package weighs 2.7 pounds). This commenter stated that small businesses that only sell a limited variety of popular products would likely not be exempt under the current proposal.

One individual stated that small businesses should not be exempt from the proposed rule.

Response: As discussed above, FSIS believes an exemption for ground or chopped products produced by small businesses is necessary because the burden of mandatory nutrition labeling may force some small firms to stop producing the product because of the cost of nutrition labeling and eventually force some small firms out of business. FSIS believes it would not be feasible for some small businesses to incur the additional costs of nutrition labeling because of their low volume of sales or low volume of ground product. FSIS believes it is feasible for larger businesses to incur the additional costs of nutrition labeling because of their higher volume of sales or larger levels of production of ground product. This final rule, with an exemption for ground or chopped products that qualify for the small business exemption in §§ 317.400(a)(1) and 381.500(a)(1), provides nutrition labeling on the maximum volume of ground or chopped product while assuring that small businesses producing low volumes of product are not at risk of going out of business or materially reducing the variety of products they deliver to their customers. Further, as discussed above, FSIS believes that the relatively small additional benefits of requiring small businesses to put nutrition labels on all ground or chopped products are outweighed by the larger additional costs.

As explained in more detail above, even if the products produced by small businesses bear a %fat/%lean statement, they will still be exempt under the small business exemption. Consumers use these statements to identify their desired product and are not misled by these statements, even if small businesses do not include nutrition information on the products' labels.

To qualify for the exemption, a retail store must either be a single retail store that employs 500 or fewer people or a multi-retail store operation that employs 500 or fewer people and that produces no more than 100,000 pounds of each ground product per year. For an official establishment to qualify for the exemption, it must be either a single-plant facility that employs 500 or fewer people, or a multi-plant company/firm that employs 500 or fewer people and produces no more than 100,000 pounds per year of each ground product. As explained in the preamble to the proposed rule, ground or chopped products formulated to have different levels of fat would be considered different food products for the purposes of the small business exemption (66 FR 4978, January 18, 2001; 74 FR 67753, December 18, 2009). As stated above and in the supplemental proposed rule, there is no small business exemption from the nutrition labeling requirements for the major cuts of single-ingredient, raw meat and poultry products because the requirements should not impose an economic hardship on small businesses (74 FR 67738). Nutrition information for the major cuts can be displayed either on the labels or on point-of-purchase materials. FSIS will make point-of-purchase materials available over the Internet free of charge. Therefore, small businesses will not incur significant costs to provide nutrition information for the major cuts of single-ingredient, raw meat and poultry products.

FSIS finds that the 100,000 pound limit in the small business exemption is appropriate because it has been successfully applied for over a decade for other nutrition labeling exemptions. Furthermore, the Agency received no compelling data to support raising the limit to 150,000 pounds for this exemption. A consistent poundage limit will be easier to apply across all meat and poultry products.

Comment: Two trade associations stated that it was necessary to provide outreach resources to the industry through meetings and materials such as compliance guidelines. One of the trade associations noted that many small businesses do not have Internet access, so FSIS's Office of Outreach, Employee Education and Training (OOEET) will need to develop hard copy materials.

Response: If retailers cannot obtain the point-of-purchase materials over the Internet, FSIS personnel will have copies of the information to provide to retailers. FSIS personnel will also conduct meetings on the final rule. For retailers that have access to the Internet, FSIS will conduct Webinars on the final rule.

Comment: The city health department asserted that nutrition labeling should be mandatory for all meat and poultry products that are sold to the food service sector to enable restaurants and food service companies to make more healthful choices, which will ultimately benefit consumer health.

Response: Existing regulations provide that products intended for further processing and products not for sale to consumers are exempt from nutrition labeling requirements (9 CFR § 317.400). Such products are exempt from nutrition labeling requirements because consumers do not see the nutrition information on products used for further processing or products that are not for sale to consumers.

Enforcement & Compliance

Comment: Several trade associations stated that there should be some flexibility in variations from estimated nutritional values in sampling and in nutrient analysis if the nutrition labeling information is based on the most current USDA National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference. One trade association questioned whether reliance on the USDA National Nutrient Database for Standard Reference or the Agricultural Research Service (ARS) calculator is considered a valid response to USDA nutrition test results. Another trade association believed that the use of the Nutrient Database for Standard Reference should be acceptable for providing nutritional values for all products. Further, the commenter stated that the nutritional values should be based on the analyzed fat content because it would minimize the number and costs of expensive analysis required.

One trade association stated that all entries in the Nutrient Database for Standard Reference that are added or removed should go through the rule-making process to ensure that all groups using these entries are considered. For example, this trade association stated that commodity type cuts and items with more than ⅛ inch fat need to be added to the Nutrient Database for Standard Reference because these products are still sold through food service channels, and it is costly for producers to provide nutrition information via nutrient analysis to commodity type customers.

One trade association stated that the ARS calculator should be updated to provide nutrition information for turkey, pork, and chicken.

One trade association suggested that the Nutrient Database for Standard Reference be split into two databases, one for retail type products and one for commodity type products. One trade association questioned how enforcement of nutrition labeling requirements will work at retail establishments and farmer's markets. The trade association further questioned whether there will be fines for non-compliance. Additionally, in order to prevent inconsistent Agency enforcement actions, the commenter stated that FSIS needs to ensure all businesses are in compliance.

Response: As FSIS stated in the preamble to the proposal, the fat content of different ground or chopped products can vary significantly, depending upon the level of fat in the product being ground and depending on whether product from AMR systems is used (66 FR 4980, January 18, 2001). As FSIS explained in the supplemental proposed rule, the procedures set forth for FSIS product sampling and nutrient analysis in 9 CFR 317.309(h)(1)–(8) and 381.409(h)(1)–(8) will be applicable to ground or chopped meat and to ground or chopped poultry products, respectively. FSIS will not analyze ground or chopped products for fat only, because if the ground product includes AMR product or product from low temperature rendering (*e.g.,* finely textured beef or lean finely textured beef), the use of these materials could affect other nutrient values in the product. (74 FR 67754, December 18, 2009).

FSIS will sample and conduct nutrient analysis of ground or chopped products to verify compliance with nutrition labeling requirements, even if nutrition labeling on these products is based on the most current representative database values contained in USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference and there are no claims on the labeling. FSIS will treat ground or chopped products in this way because the fat content of these products can vary significantly. FSIS employees cannot visually assess whether nutrition information on the label of ground or chopped products accurately reflects the labeled products' contents because, in most cases, it is not possible to visually assess the level of fat in a ground or chopped product. For example, FSIS employees cannot visually determine whether product that is labeled 17 percent fat ground beef is actually 17 percent fat ground beef as opposed to 27 percent fat (or another percentage of fat) ground beef (66 FR 4980, January 18, 2001) (74 FR 67755, December 18, 2009). Therefore, FSIS will treat ground or chopped products as it treats all other products for which the regulations require nutrition information on their package. In the event that FSIS samples and conducts nutrient analysis of ground or chopped beef, if producers know the fat content of their product and have used USDA database values on the nutrition labels, FSIS would likely find the product's label in compliance with nutrition labeling requirements, unless the product's source materials contain a significant amount of AMR product or product from low temperature rendering (74 FR 67755, December 18, 2009).

If nutrition labeling of the major cuts of single-ingredient, raw products (other than ground beef or ground pork) is based on USDA's National Nutrient Data Bank or the USDA's National Nutrient Database for Standard Reference, and there are no nutrition claims on the labeling, FSIS will not sample and conduct a nutrient analysis of the products. The preamble to the supplemental proposed rule explained that, for the major cuts, FSIS personnel can visually identify the particular cut. FSIS further explained that, if the nutrition information for these products is based on USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference, and there are no nutrition claims on the labeling, it is not necessary for FSIS to verify the accuracy of the data because they are USDA data. USDA has already evaluated these USDA data and determined that they are valid (66 FR 4980, January 18, 2001).

The USDA National Nutrient Database for Standard Reference is developed and maintained by the Agricultural Research Service (ARS) and can be found on the Internet at the following address: *http://www.ars.usda.gov\nutrientdata.* Information is available at this site for ground beef products containing 5%, 10%, 15%, 20%, 25%, and 30% fat. In addition, ARS has included a calculator on the Internet, with the Database. Parties can enter the amount of fat (5% to 30% percent fat) or lean (70% to 95% lean) in a particular raw ground beef product, and the calculator will calculate the nutrient values for the product based on the fat value entered.

The USDA National Nutrient Database for Standard Reference also includes a set of tables with nutrient values for ground pork with fat levels from 4% to 28%, in one percent increments. ARS did not develop a calculator because, at this time, labeling for ground pork at retail does not include statements of percentage fat or percentage lean. One trade association comment to the supplemental proposed rule stated that nutritional tables will be sufficient for retailers to create nutrition labels for ground pork.

The USDA Nutrient Database also includes nutrient values for raw and cooked ground chicken but does not include nutrient values for such product at varying fat levels. Ground chicken is not typically produced over a wide

range of fat levels. ARS also has nutrient data for three types of commonly marketed ground turkey products. ARS also has published nutrient values for ground turkey with fat levels of 0%, 7%, and 15%. Most ground poultry products are produced and labeled at Federal establishments rather than at retail.

Commodity products are exempt from nutrition labeling requirements under 9 CFR 317.400 and 381.500 because they are not offered for sale. If commodity products bear nutrition claims or information, then they will be subject to the nutrition labeling requirements. Producers that sell product at farmers markets would typically be exempt from nutrition labeling requirements under the small business exemption.

FSIS will explore its regulatory options, including seeking criminal penalties, if it discovers a violation of the nutrition labeling requirements. FSIS is not authorized to impose civil penalties, including fines, under the FMIA or PPIA. For more discussion of possible enforcement actions following implementation of the rule, see the supplemental proposed rule (74 FR 67754, December 18, 2009).

Effective Date

Comment: Several trade associations stated that the requirements for major cuts of single-ingredient, raw meat and poultry products and ground or chopped products should become effective on the uniform compliance date, January 1, 2012. One of the trade associations believed that different implementation dates for the two types of products would be confusing to consumers and may require two outreach programs. The other trade association argued that establishments need as much time as possible to understand the new requirements and develop new labels and point-of-purchase materials before the requirements become effective. The food marketing organization agreed that there should be additional time prior to implementation of the nutrition labeling requirements for the major cuts because of the burden on the retailers.

One trade association stated that an 18–24 month period was needed for implementation.

The food marketing organization argued that the final rule should include a provision allowing an extension of the effective dates of up to six months if there is evidence of difficulties with compliance. One trade association agreed with a six month or a twelve month extension period before the effective date of the rule.

Response: As FSIS stated in the supplemental proposed rule, requirements for ground or chopped products will become effective on January 1, 2012, the uniform compliance date for new food labeling regulations that are issued between January 1, 2009, and December 31, 2010, to minimize costs associated with on-package labels. In the supplemental proposed rule, FSIS proposed that the labeling requirements for the major cuts be effective one year from the date of publication of the final rule because the final rule allows for the presentation of nutrition information for the major cuts of single-ingredient, raw meat and poultry products at their point-of-purchase and will not require changes to product labels (74 FR 67741, December 18, 2009). But, because one year from the date of publication will only be a few days before the effective date for ground and chopped products, January 1, 2012, FSIS is also establishing January 1, 2012, as the effective date for the labeling requirements for the major cuts.

Costs and Benefits

Comment: One trade association stated that the proposed rule was discriminatory because it would have a disproportionate effect on retailers with service meat departments. This trade association also noted that under this rule, retailers will have a more costly burden compared to restaurant competitors.

One trade association argued that FSIS should finalize the regulation with the least amount of economic impact on the meat industry.

Several individuals and an industry commenter were concerned that the rule would increase costs to producers and consumers and increase taxes.

Response: The Regulatory Flexibility Act requires Federal Agencies to consider the effect of regulations on small entities in developing regulations (74 FR 67757, December 18, 2009). However, FSIS has sought to make this rule as fair and equitable as possible, regardless of the size of the company involved.

Thus, to minimize the burden on small businesses, the final rule provides a small business exemption. In addition, the final rule provides an exemption from nutrition labeling requirements for ground or chopped products that are ground or chopped at an individual customer's request and that are prepared and served or sold at retail, provided that the labels or labeling of these products bear no nutrition claims or nutrition information. FSIS will also provide nutrition labeling materials for the major cuts of single-ingredient, raw products and for ground or chopped products on a free basis through its Web site. Retailers can display these materials at the point-of-purchase for the major cuts. Also, retailers and official establishments can obtain nutrition information for ground or chopped products at the following Web site: *http://www.ars.usda.gov.* (74 FR 67757, December 18, 2009).

As FSIS explained in the proposed rule, restaurant menus generally do not fall within the scope of the nutrition labeling regulations. *See* 9 CFR 317.400(b) and 381.500(b). Similarly, although a restaurant menu would most likely not include a major cut of single-ingredient, raw product, if it did, the menu would not fall within the scope of the proposed regulations. (66 FR 4979, January 18, 2001).

FSIS does not believe that it has underestimated the costs of the final rule. Since the Supplemental Proposed Rule Regulatory Impact Analysis was done, the total costs of labeling may have even decreased because of more cost-effective technology, such as less expensive computerized flexography and scale-label printers. The additional costs of labeling would be relatively low for the affected businesses. Furthermore, the final rule will exempt small businesses that produce ground or chopped product from nutrition labeling requirements. As FSIS explained in the proposed rule and supplemental proposed rule, this rule will not significantly increase costs to affected producers and retailers because the additional cost of this rule is a relatively small proportion of the total costs of production or retail marketing of affected businesses. The estimated cost of the rule on a per pound basis is about $0.006, for ground or chopped products. This increase in cost should not affect consumer costs or purchases.

Comment: According to a case study, one individual stated that the proposed rule may produce benefits of $62 to $125 million annually.

Response: FSIS projected that the annualized average present value of the benefit of the final rule is about $75.5 million, after accounting for assumed levels of current compliance. For a discussion of the methodology used to estimate the benefits of the final rule, please *see* the Final Regulatory Impact Analysis below.

Other Comments

Comment: The consumer organization believed nutrition labels should be required to indicate the amount of trans fat in the product similar to the FDA's policy. According to the consumer organization, the trans fat in beef and dairy products has the same harmful

impact on LDL cholesterol as the trans fat in partially hydrogenated oils.

Response: FSIS does not require the mandatory labeling of trans fats as required by FDA. However, through routine label approval, FSIS estimates 75% to 80% of FSIS nutrition labels do voluntarily include trans fat in the nutrition facts information. FSIS anticipates many companies will voluntarily include trans fat in the nutrition facts information on single-ingredient and ground products.

Comment: The city health department stated that nutrition labels for meat and poultry products should be consistent with the Nutrition Labeling and Education Act and the majority of packaged foods.

Response: Products under FSIS jurisdiction are not subject to the Nutrition Labeling and Education Act (74 FR 67754, December 18, 2009). But, FSIS believes that the requirements of this final rule are consistent with the Nutrition Labeling and Education Act.

Comments: FSIS also received comments on issues outside the scope of these regulations. One trade association stated that all nutrition labels should specify all the nutrients found in meat products. One individual suggested that approximate cook times for chicken and pork products should be placed on their labels. One individual stated that meat and poultry product labels should include information such as date butchered, date preserved/frozen, any hormones or antibiotics in the product, and genetic engineering used in the creation of the product. One perishable items tracking company argued that tracers like radio frequency identification tags should be mandated in all meat and poultry shipping containers to record the shipping times and ensure the products were kept at safe temperatures similar to the TEDSBOX system. Further, the tracing information should be provided on all product labels.

Section II

Executive Order 12866—Final Rule Regulatory Impact Analysis (FRIA) and Final Regulatory Flexibility Act (RFA) Assessment

This action has been reviewed for compliance with Executive Order 12866. This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 and was determined to be significant.

In this FRIA, FSIS is adopting the compliance adjusted analysis (*i.e.,* accounting for assumed levels of current compliance with the final rule) presented in Table 1 below and in Table 30c and Appendix C of the supplemental Preliminary Regulatory Impact Analysis (PRIA) and the supplemental initial Regulatory Flexibility Act (RFA) assessment as final. This FRIA and final RFA assessment do not finalize the supplemental PRIA or the supplemental initial RFA. The PRIA used both a baseline before considering existing compliance (*i.e.,* assuming no compliance) and a baseline after considering an assumed compliance to the rule. Then, in the supplemental PRIA, FSIS compared the analyses that used the two cases of different baselines of compliance. FSIS used the analysis that accounted for the assumed levels of nutrition labeling in compliance with this final rule here because FSIS thinks that this baseline would best represent the current state of the use of nutrition labeling of these products before FSIS implements the final rule.

The supplemental PRIA overestimated the amounts of ground or chopped products and major cuts that would be impacted by the final rule by not taking into account the assumed level of voluntary compliance with the nutrition labeling regulations that currently exists—the 68 percent compliance rate of voluntary nutrition labeling of ground or chopped products.[1] and 54.8 percent level of voluntary compliance of stores that provide nutrition labeling for major cuts.[2] Thus, the averages and ranges of benefits and costs used in the FRIA reflect the supplemental PRIA baseline that considered the assumed levels of compliance.

OMB designated the supplemental proposed rule economically significant based on annual benefits that did not take into account current benefits that result from nutrition labeling information that is currently available; costs in the supplemental PRIA did not reach the threshold for economically significant regulations. In this FRIA, after accounting for existing levels of compliance, the additional benefits were only "significant," as were the additional costs. The complete supplemental PRIA and the complete final RFA assessment can be found online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2009_Proposed_Rules_Index/index.asp.*

A. Costs and Benefits of the Final Rule

The FRIA assumes that some establishments or retail facilities have incurred costs associated with the requirements of this regulation prior to its effective date, and many firms have already been providing the information that is being required.[3] Hence, the discounted average present value of the total costs, over a 20-year period, are estimated to be about $115.4 million using a 7 percent discount rate and about $156.7 million using a 3 percent discount rate. The corresponding annualized present values of the average total costs are $10.9 million, using a 7 percent discount rate, and $10.5 million, using a 3 percent discount rate (*see* Table 1). For point-of-purchase (POP) nutrition information for major cuts of single ingredient, raw products, the annualized present values of the average total costs are $1.32 million, using a 7 percent discount rate, and $1.30 million, using a 3 percent discount rate. For on-package nutrition labels for ground or chopped products, the annualized present values of the average total costs are $9.6 million, using a 7 percent discount rate, and 9.2 million, using a 3 percent discount rate. For POP nutrition information for major cuts of single ingredient, raw products, the estimated additional annual cost of the rule on a per pound basis is about $0.0002 ($1.3 million/7,548 million pounds). For ground or chopped products, the estimated additional annual cost of the rule on a per pound basis is about $0.006 ($9.6 million/1,568 million pounds). However, the additional cost of nutrition labeling for ground or chopped products may be overstated because firms can use their existing stock of labels before incurring additional costs of new labeling, under the Uniform Compliance Date for Food Labeling Regulations.

The average present values of the benefits are about $800 million and about $1,358 million, using 7 and 3 percent discount rates, respectively. The corresponding annualized average present values of the benefits are about $75.5 million and about $91.3 million, using 7 and 3 percent discount rates, respectively. Table 1 provides a summary of these annualized net present values of costs and benefits.

[1] National Cattlemen's Beef Association, 2004. National Meat Case Study.

[2] U.S. Department of Agriculture, October 1999. Nutrition Labeling/Safety Handling Information Study-Raw Meat and Poultry. Prepared by Retail Diagnostic, Inc., Oradell, New Jersey. Final Report 2000.

[3] The impacts of a 68 percent compliance rate for nutrition labeling of ground or chopped products (NCBA, 2004) and a 54.8 percent compliance rate for major cuts (USDA, 1999) are included in this RIA of the Final Rule.

TABLE 1—SUMMARY OF ANNUALIZED NET PRESENT VALUES OF COSTS AND BENEFITS, AFTER ACCOUNTING FOR ASSUMED LEVELS OF CURRENT COMPLIANCE TO THE FINAL RULE.

[$million/year]

Category	Primary or average estimate	Low estimate	High estimate	UNITS		
				Year dollars	Discount	Period covered
Benefits:						
Annualized	*75.5*	*68.1*	*84.8*	*2002*	*7%*	*20 years*
Monetized $million/year*	*91.3*	*83.9*	*100.6*	*2002*	*3%*	*20 years*
Qualitative	*Consumers might also choose to use nutritional information to enhance enjoyment of food, and not just to raise their health status.*					
Costs:						
Annualized	*10.9*	*8.9*	*14.7*	*2002*	*7%*	*20 years*
Monetized $million/year	*10.5*	*8.6*	*14.4*	*2002*	*3%*	*20 years*

NOTES:

** Monetized benefits of potential lives saved*

NOTE: *These estimates take into account assumed levels of voluntary compliance with the nutrition labeling requirements for ground or chopped products that currently exists—the 68 percent compliance rate (NCBA, 2004) of voluntary nutrition labeling of ground or chopped products and 54.8 percent level of voluntary compliance (USDA, 1999) of stores that provide nutrition labeling for major cuts*

The projected annualized average net present values of costs of the rule's nutrition labeling requirements appear to be justified by the larger projected annualized average net present values of benefits.

B. Regulatory Flexibility Act (RFA)—Assessment

This final Regulatory Flexibility Act (RFA) assessment is not changed from the supplemental preliminary RFA assessment that was published in the supplemental proposed rule on 18 December 2009.

Based on the cost analysis, FSIS certifies that this final rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

FSIS does not believe that any very small processing operations (grinding firms) would be affected by the regulation because very small meat and poultry operations employ nine or fewer employees. These establishments would find it difficult to produce over 100,000 pounds per ground product annually because these employees also process other products.

Small retail stores would incur the additional cost of providing POP nutrition information for the major cuts of single-ingredient, raw products. There are about 47,422 small retail firms that own about 51,431 small retail stores that would be required to provide POP information for the major cuts of single-ingredient, raw products. FSIS estimates that the cost to a retail store for placards would be $10.56 for labor plus $65.17 for materials or approximately $75.73 per store. The annualized cost, assuming that the placards have to be replaced every two years, is about $41.88 using a 7 percent discount rate. All the retail stores, including small and very small businesses would incur these additional costs in either the first year, if the store is not currently providing POP nutrition information for the major cuts of single-ingredient, raw products, or in the third year, if the store is currently providing this information. FSIS believes that these additional costs are not significant even for very small businesses.

Retail stores would also incur additional costs related to required nutrition labels for ground or chopped products. A total of 74,910 stores owned by 47,688 firms could be affected. However, 23,479 stores owned by 266 firms are considered to be large according to the 2002 Economic Census. If they grind or chop over 100,000 pounds of a particular product annually, then, in the worst case scenario, as many as 51,431 small establishments owned by 47,422 firms could be affected.[4]

FSIS estimates that using a 7 percent discount rate the sum of the annualized average cost to each retail store that is not currently providing nutrition information for the major cuts or ground or chopped products would be $42 for nutrition information placards, $486 for upgrading and maintaining scale-printer systems, $969 for redesigning larger store logo labels, and $40 for using larger labels. For a store that is not currently providing nutrition information for the major cuts or ground or chopped product, the annualized total cost over 20 years, using a 7 percent discount rate, would be about $1,537, per store. In summary, FSIS concludes that this final rule would not have a significant impact on a substantial number of small entities.

Based on the 2002 Economic Census of the U.S. Department of Commerce, meat and poultry processing establishments that are small entities had annual revenues from total value of shipments that ranged from $0.454 million to $96.038 million. For each processing (grinding) establishment affected that is not currently providing nutrition information for ground or chopped products, the additional annualized average total cost is about $1,402. Then, for each such processing (grinding) establishment, additional annualized average total costs as a percent of revenues range from a lower bound of 0.001 percent ($1,402/$96.038 million) to an upper bound of 0.3 percent ($1,402/$0.454 million).

Further, small entity retail stores, supermarkets and other grocery (except convenience) stores and meat market stores, had annual revenues from sales that ranged from $0.343 million to $8.873 million. Also, the companies or firms of the small retail stores had annual revenues from sales that ranged from $0.343 million to $48.342 million. Additional annualized total costs as a percent of revenues range from the lower bound of 0.02 percent ($1,537/$8.873 million) to the upper bound of 0.4 percent ($1,537/$0.343 million). Many of these retail firms that are small entities own multiple retail stores that are small entity supermarkets and other grocery (except convenience) stores.

[4] RTI believes that all of these businesses will be exempt from nutrition labeling requirements. For purposes of conducting a sensitivity analysis, this analysis assumes that they are all small for purposes of the Regulatory Flexibility Act and that they will not qualify for the small business exemption.

The exemption for small businesses affects about 1.238 billion pounds of meat or poultry product affected by the final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on Federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. However, States and local jurisdictions may exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This final rule does not have retroactive effect.

Administrative proceedings would not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in §§ 306.5 and 381.35 must be exhausted before there is any judicial challenge of the application of the rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under FMIA and PPIA.

Paperwork Requirements

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). This information collection request is at OMB awaiting approval. FSIS will collect no information associated with this rule until the information collection is approved by OMB.

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 Ave., SW., Room 60853 South Building, Washington, DC 20250–3700; (202) 720–0345.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all 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 minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2010_Interim_&_Final_Rules_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 constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and 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_&_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.

Section III

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat Inspection, Nutrition, Reporting and recordkeeping requirements.

9 CFR Part 381

Food labeling, Food packaging, Nutrition, Poultry and poultry products, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, FSIS is amending 9 CFR Chapter III, as follows:

PART 317—LABELING, MARKING DEVICES AND CONTAINERS

■ 1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 317.300 is revised to read as follows:

§ 317.300 Nutrition labeling of meat and meat food products.

(a) Nutrition labeling must be provided for all meat and meat food products intended for human consumption and offered for sale, except single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301 and are not major cuts of single-ingredient, raw meat products identified in § 317.344, unless the product is exempted under § 317.400 . Nutrition labeling must be provided for the major cuts of single-ingredient, raw meat products identified in § 317.344, either in accordance with the provisions of § 317.309 for nutrition labels, or in accordance with the provisions of § 317.345 for point-of-purchase materials, except as exempted under § 317.400. For all other products for which nutrition labeling is required, including ground or chopped meat products described in § 317.301, nutrition labeling must be provided in accordance with the provisions of § 317.309, except as exempted under § 317.400.

(b) Nutrition labeling may be provided for single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301 and that are not major cuts of single-ingredient, raw meat products identified

in § 317.344, either in accordance with the provisions of § 317.309 for nutrition labels, or in accordance with the provisions of § 317.345 for point-of-purchase materials.

■ 3. A new § 317.301 is added to read as follows:

§ 317.301 Required nutrition labeling of ground or chopped meat products.

(a) Nutrition labels must be provided for all ground or chopped products (livestock species) and hamburger with or without added seasonings (including, but not limited to, ground beef, ground beef patties, ground sirloin, ground pork, and ground lamb) that are intended for human consumption and offered for sale, in accordance with the provisions of § 317.309, except as exempted under § 317.400.

(b) [Reserved]

■ 4. Section 317.309 is amended as follows:

■ a. In paragraph (b)(3), the first sentence is amended by adding "that are not ground or chopped meat products described in § 317.301" after the phrase "single-ingredient, raw products", and by removing "as set forth in § 317.345(a)(1)"; the second sentence is amended by adding, "that are not ground or chopped meat products described in § 317.301" after the phrase "single-ingredient, raw products", and the following new sentence is added after the first sentence: "For single-ingredient, raw products that are not ground or chopped meat products described in § 317.301, if data are based on the product 'as consumed,' the data must be presented in accordance with § 317.345(d)";

■ b. Amend paragraph (b)(10) by adding the following new sentence at the end of the paragraph: "The declaration of the number of servings per container need not be included in nutrition labeling of single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301, including those that have been previously frozen.";

■ c. Amend paragraph (b)(11) by adding the phrase "single-ingredient, raw products that are not ground or chopped meat products described in § 317.301 and" after "exception of";

■ d. Amend paragraph (d)(3)(ii) by removing the period and adding "or on single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301." at the end of the paragraph;

■ e. Amend paragraph (e)(3) by adding ", but may be on the basis of 'as consumed' for single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301," after "as packaged"; and

■ f. Amend paragraph (h)(9) by removing the phrase "(including ground beef)", by adding, "that are not ground or chopped meat products described in § 317.301" after "products", by removing the phrase, "its published form, the Agriculture Handbook No. 8 series available from the Government Printing Office", and by adding, in its place, "its released form, the USDA National Nutrient Database for Standard Reference", and by removing the period and adding the following at the end of the paragraph: " as provided in § 317.345(e) and (f)."

§ 317.343 [Removed]

■ 5. Section 317.343 is removed.

■ 6. Section 317.344 is amended by removing the phrases "ground beef regular without added seasonings, ground beef about 17% fat," and "ground pork".

■ 7. Section 317.345 is amended as follows:

■ a. Revise the section heading and paragraphs (a) and (c);

■ b. Amend paragraph (d) by removing "should" and adding, in its place, "for products covered in paragraphs (a)(1) and (a)(2) must";

■ c. Amend paragraph (e) by removing "its published form, the Agriculture Handbook No. 8 series" and by adding, in its place, "its released form, the USDA National Nutrient Database for Standard Reference", and by removing "(including ground beef)";

■ d. Amend paragraph (f) by adding "provided" after "nutrition information is"; and

■ e. Amend paragraph (g) by removing the phrase "(including ground beef)".

The revisions read as follows:

§ 317.345 Nutrition labeling of single-ingredient, raw meat products that are not ground or chopped products described in § 317.301.

(a)(1) Nutrition information on the major cuts of single-ingredient, raw meat products identified in § 317.344, including those that have been previously frozen, is required, either on their label or at their point-of-purchase, unless exempted under § 317.400. If nutrition information is presented on the label, it must be provided in accordance with § 317.309. If nutrition information is presented at the point-of-purchase, it must be provided in accordance with the provisions of this section.

(2) Nutrition information on single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301 and are not major cuts of single-ingredient, raw meat products identified in § 317.344, including those that have been previously frozen, may be provided at their point-of-purchase in accordance with the provisions of this section or on their label, in accordance with the provisions of § 317.309.

(3) A retailer may provide nutrition information at the point-of-purchase by various methods, such as by posting a sign or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials, all of the format and content requirements of § 317.309 apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials, the requirements of § 317.309 apply, provided, however:

(i) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in § 317.309(c)(8)) and footnote required by § 317.309(d)(9) may be omitted; and

(ii) The point-of-purchase materials are not subject to any of the format requirements.

* * * * *

(c) For the point-of-purchase materials, the declaration of nutrition information may be presented in a simplified format as specified in § 317.309(f).

* * * * *

■ 8. Section 317.362 is amended by adding a new paragraph (f) to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content.

* * * * *

(f) A statement of the lean percentage may be used on the label or in labeling of ground or chopped meat products described in § 317.301 when the product does not meet the criteria for "low fat," defined in § 317.362(b)(2), provided that a statement of the fat percentage is contiguous to and in lettering of the same color, size, type, and on the same color background, as the statement of the lean percentage.

* * * * *

■ 9. Section 317.400 is amended by:

■ a. Revising paragraph (a)(1) introductory text;

■ b. Amending paragraph (a)(1)(ii) by adding ", including a single retail store," after the phrase "single-plant facility," and by adding, ", including a multi-

retail store operation," after "company/firm";

■ c. Amending paragraph (a)(7)(i) by removing the semi-colon and "and" and by adding the following at the end of the paragraph: ", provided, however, that this exemption does not apply to ready-to-eat ground or chopped meat products described in § 317.301 that are packaged or portioned at a retail establishment, unless the establishment qualifies for an exemption under (a)(1);";

■ d. Amending paragraph (a)(7)(ii) by removing the period and by adding the following at the end of the paragraph: ", provided, however, that this exemption does not apply to multi-ingredient ground or chopped meat products described in § 317.301 that are processed at a retail establishment, unless the establishment qualifies for an exemption under (a)(1); and";

■ e. Adding a new paragraph (a)(7)(iii); and

■ f. Paragraph (d)(1) is amended by removing the period at the end of the first sentence, and by adding the following to the end of the first sentence: ", except that this exemption does not apply to the major cuts of single-ingredient, raw meat products identified in § 317.344."

The revision and additions read as follows:

§ 317.400 Exemption from nutrition labeling.

(a) * * *

(1) Food products produced by small businesses, other than the major cuts of single-ingredient, raw meat products identified in § 317.344 produced by small businesses, provided that the labels for these products bear no nutrition claims or nutrition information, and ground or chopped products described in § 317.301 produced by small businesses that bear a statement of the lean percentage and fat percentage on the label or in labeling in accordance with § 317.362(f), provided that labels or labeling for these products bear no other nutrition claims or nutrition information,

* * * * *

(7) * * *

(iii) Products that are ground or chopped at an individual customer's request.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 10. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

■ 11. Section 381.400 is revised to read as follows:

§ 381.400 Nutrition labeling of poultry products.

(a) Nutrition labeling must be provided for all poultry products intended for human consumption and offered for sale, except single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401 and are not major cuts of single-ingredient, raw poultry products identified in § 381.444, unless the product is exempted under § 381.500. Nutrition labeling must be provided for the major cuts of single-ingredient, raw poultry products identified in § 381.444, either in accordance with the provisions of § 381.409 for nutrition labels, or in accordance with the provisions of § 381.445 for point-of-purchase materials, except as exempted under § 381.500. For all other products that require nutrition labeling, including ground or chopped poultry products described in § 381.401, nutrition labeling must be provided in accordance with the provisions of § 381.409, except as exempted under § 381.500.

(b) Nutrition labeling may be provided for single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401 and that are not major cuts of single-ingredient, raw poultry products identified in § 381.444, either in accordance with the provisions of § 381.409 for nutrition labels, or in accordance with the provisions of § 381.445 for point-of-purchase materials.

* * * * *

■ 12. A new § 381.401 is added to read as follows:

§ 381.401 Required nutrition labeling of ground or chopped poultry products.

Nutrition labels must be provided for all ground or chopped poultry (kind) with or without added seasonings (including, but not limited to, ground chicken, ground turkey, and (kind) burgers) that are intended for human consumption and offered for sale, in accordance with the provisions of § 381.409, except as exempted under § 381.500.

■ 13. Section 381.409 is amended as follows:

■ a. Revise paragraph (b)(3);

■ b. Amend paragraph (b)(10) by adding the following new sentence at the end of the paragraph: "The declaration of the number of servings per container need not be included in nutrition labeling of single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401, including those that have been previously frozen.";

■ c. Amend paragraph (b)(11) by adding the phrase "single-ingredient, raw products that are not ground or chopped poultry products described in § 381.401 and" after "exception of";

■ d. Amend paragraph (d)(3)(ii) by removing the period and adding "or on single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401." at the end of the paragraph;

■ e. Amend paragraph (e)(3) by adding ", but may be on the basis of 'as consumed' for single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401," after "as packaged"; and

■ f. Amend paragraph (h)(9) by adding, "that are not ground or chopped poultry products described in § 381.401" after "products", by removing the phrase, "its published form, the Agriculture Handbook No. 8 series", and by adding, in its place, "its released form, the USDA National Nutrient Database for Standard Reference", and by removing the period and adding the following at the end of the paragraph: ", as provided in § 381.445(e) and (f)."

The revision reads as follows:

§ 381.409 Nutrition label content.

* * * * *

(b) * * *

(3) The declaration of nutrient and food component content shall be on the basis of the product "as packaged" for all products, except that single-ingredient, raw products that are not ground or chopped poultry products as described in § 381.401 may be declared on the basis of the product "as consumed." For single-ingredient, raw products that are not ground or chopped poultry products described in § 381.401, if data are based on the product "as consumed," the data must be presented in accordance with § 381.445(d). In addition to the required declaration on the basis of "as packaged" for products other than single-ingredient, raw products that are not ground or chopped poultry products as described in § 381.401, the declaration may also be made on the basis of "as consumed," provided that preparation and cooking instructions are clearly stated.

* * * * *

§ 381.443 [Removed]

■ 14. Section 381.443 is removed.

■ 15. Section 381.445 is amended as follows:

■ a. Revise the section heading and paragraph (a) and (c);

■ b. Amend paragraph (d) by removing "should" and adding, in its place, "for products covered in paragraphs (a)(1) and (a)(2) must";
■ c. Amend paragraph (e) by removing "its published form, the Agriculture Handbook No. 8 series" and by adding, in its place, "its released form, the USDA National Nutrient Database for Standard Reference."; and
■ d. Amend paragraph (f) by adding "provided" after "nutrition information is".

The revisions read as follows:

§ 381.445 Nutrition labeling of single-ingredient, raw poultry products that are not ground or chopped products described in § 381.401.

(a)(1) Nutrition information on the major cuts of single-ingredient, raw poultry products identified in § 381.444, including those that have been previously frozen, is required, either on their label or at their point-of-purchase, unless exempted under § 381.500. If nutrition information is presented on the label, it must be provided in accordance with the provisions of § 381.409. If nutrition information is presented at the point-of-purchase, it must be provided in accordance with the provisions of this section.

(2) Nutrition information on single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401 and are not major cuts of single-ingredient, raw poultry products identified in § 381.444, including those that have been previously frozen, may be provided at their point-of-purchase in accordance with the provisions of this section or on their label, in accordance with the provisions of § 381.409.

(3) A retailer may provide nutrition information at the point-of-purchase by various methods, such as by posting a sign or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials, all of the format and content requirements of § 381.409 apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials, the requirements of § 381.409 apply, provided, however:

(i) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in § 381.409(c)(8)) and footnote required by § 381.409(d)(9) may be omitted; and

(ii) The point-of-purchase materials are not subject to any of the format requirements.

* * * * *

(c) For the point-of-purchase materials, the declaration of nutrition information may be presented in a simplified format as specified in § 381.409(f).

* * * * *

■ 16. Section 381.462 is amended by adding a new paragraph (f) to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content.

* * * * *

(f) A statement of the lean percentage may be used on the label or in labeling of ground or chopped poultry products described in § 381.401 when the product does not meet the criteria for "low fat," defined in § 381.462(b)(2), provided that a statement of the fat percentage is contiguous to and in lettering of the same color, size, type, and on the same color background, as the statement of the lean percentage.

* * * * *

■ 17. Section 381.500 is amended by:
■ a. Revising paragraph (a)(1) introductory text;
■ b. Amending paragraph (a)(1)(ii) by adding, ", including a single retail store," after the phrase "single-plant facility," and by adding ",including a multi-retail store operation" after "company/firm";
■ c. Amending paragraph (a)(7)(i) by removing the semi-colon and "and" and adding the following at the end of the paragraph: ", provided, however, that this exemption does not apply to ready-to-eat ground or chopped poultry products described in § 381.401 that are packaged or portioned at a retail establishment, unless the establishment qualifies for an exemption under (a)(1);";
■ d. Amending paragraph (a)(7)(ii) by removing the period and adding the following at the end of the paragraph: ", provided, however, that this exemption does not apply to multi-ingredient ground or chopped poultry products described in § 381.401 that are processed at a retail establishment, unless the establishment qualifies for an exemption under (a)(1); and";
■ e. Adding a new paragraph (a)(7)(iii); and
■ f. Amending paragraph (d)(1) by removing the period at the end of the sentence, and by adding the following to the end of the sentence: "except that this exemption does not apply to the major cuts of single-ingredient, raw poultry products identified in § 381.444."

The revision and additions read as follows:

§ 381.500 Exemption from nutrition labeling.

(a) * * *

(1) Food products produced by small businesses other than the major cuts of single-ingredient, raw poultry products identified in § 381.444 produced by small businesses, provided that the labels for these products bear no nutrition claims or nutrition information, and ground or chopped products described in § 381.401 produced by small businesses that bear a statement of the lean percentage and fat percentage on the label or in labeling in accordance with § 381.462(f), provided that labels or labeling for these products bear no other nutrition claims or nutrition information,

* * * * *

(7) * * *

(iii) Products that are ground or chopped at an individual customer's request.

* * * * *

Done in Washington, DC on December 21, 2010.

Alfred V. Almanza,

Administrator.

[FR Doc. 2010–32485 Filed 12–28–10; 8:45 am]

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Federal Register

Wednesday,
December 29, 2010

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, 390, et al.
Hours of Service of Drivers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, 390, and 395

[Docket No. FMCSA–2004–19608]

RIN 2126–AB26

Hours of Service of Drivers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: To promote safety and to protect driver health, FMCSA proposes to revise the regulations for hours of service for drivers of property-carrying commercial motor vehicles (CMVs). To achieve these goals, the proposed rule would provide flexibility for drivers to take breaks when needed and would reduce safety and health risks associated with long hours. The proposed rule would make seven changes from current requirements. First, the proposed rule would limit drivers to either 10 or 11 hours of driving time following a period of at least 10 consecutive hours off duty; on the basis of all relevant considerations, FMCSA currently favors a 10-hour limit, but its ultimate decision will include a careful consideration of comments and any additional data received. Second, it would limit the standard "driving window" to 14 hours, while allowing that number to be extended to 16 hours twice a week. Third, actual duty time within the driving window would be limited to 13 hours. Fourth, drivers would be permitted to drive only if 7 hours or less have passed since their last off-duty or sleeper-berth period of at least 30 minutes. Fifth, the 34-hour restart would be retained, subject to certain limits: The restart would have to include two periods between midnight and 6 a.m. and could be started no sooner than 168 hours (7 days) after the beginning of the previously designated restart. Sixth, the definition of "on duty" would be revised to allow some time spent in or on the CMV to be logged as off duty. Seventh, the oilfield operations exception would be revised to clarify the language on waiting time and to state that waiting time would not be included in the calculation of the driving window.

DATES: You may submit comments by February 28, 2011.

ADDRESSES: You may submit comments, identified by docket number FMCSA–2004–19608 or RIN 2126–AB26, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–4325.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2004–19608), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. However, *see* the Privacy Act section below regarding availability of this information to the public.

To submit your comment online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rules," insert "FMCSA–2004–19608" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them

in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

All public comments, as well as documents mentioned in this notice, are available in the public docket. To view them, go to *http://www.regulations.gov* and click on the "read comments" box in the upper right hand side of the screen. Then, in the "Keyword" box insert "FMCSA–2004–19608" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review Department of Transportation's (DOT) Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

II. Overview

Goals. The goal of this HOS proposed rule is to improve safety while ensuring that the requirements would not have an adverse impact on driver health. The proposed rule also would provide drivers with the flexibility to obtain rest when they need it and to adjust their schedules to account for unanticipated delays. FMCSA has also attempted to make the proposed rule easy to understand and readily enforceable.

Admittedly, design of HOS rules raises conceptual and empirical challenges. The impact of such rules on CMV safety is difficult to separate from the many other factors that affect heavy-vehicle crashes. The 2008 FMCSA final rule on HOS noted that "FMCSA has consistently been cautious about inferring causal relationships between the HOS requirements and trends in overall motor carrier safety. The Agency believes that the data show no decline in highway safety since the implementation of the 2003 rule and its re-adoption in the 2005 rule and the 2007 [interim final rule]" (73 FR 69567, 69572, November 19, 2008). While that statement remains correct, the total number of crashes, though declining, is still unacceptably high. Moreover, the source of the decline in crashes is unclear.

FMCSA believes that the HOS regulations proposed today, coupled with the Agency's many other safety initiatives and assisted by the actions of an increasingly safety-conscious motor carrier industry, would result in a significant improvement in safety. We note as well that the proposed rule is intended to protect drivers from the serious health problems associated with excessively long work hours, without significantly compromising their ability to do their jobs and earn a living.

Summary of the Proposed Rule. The proposed rule would change the existing HOS regulations in a number of ways. The required off-duty period would remain at a minimum of 10 consecutive hours. Driving time between two such periods could either be 10 hours, as it was prior to the 2003 rule (68 FR 22455; April 28, 2003), or 11 hours. While the 10-hour rule is currently FMCSA's currently preferred option, the Agency discusses both alternatives in detail below. The driving window would remain, on most days, at 14 consecutive hours after coming on duty following a break of at least 10 hours; but a driver would be permitted to be on duty for only 13 hours of that time as opposed to the current 14 hours. A driver would also be required to be released from duty at the end of the 14-hour period. To provide drivers with the ability to rest, if needed, or to respond to unanticipated conditions, twice a week, drivers would be allowed to extend the driving window to 16 hours. Extending the driving window, however, would not increase either driving or on-duty time. As a consequence of the 13-hour on-duty limit, a driver using the extension would need to take up to 3 hours off duty during that duty day. A driver would be required to go off duty at the end of the 16-hour driving window.

To prevent excessive hours of continuous driving, the proposed rule would permit drivers to drive only if 7 hours or less have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes. For example, if a driver began driving immediately after coming on duty, he or she could drive until the 7th hour. However, because the required breaks would be linked to time on duty, a driver who first worked 3 hours at a terminal and then began driving would have to take a half-hour (or longer) break no later than the end of the 4th hour of driving (*i.e.,* the 7th hour on duty). The proposed rule would give drivers great flexibility in scheduling their breaks. If someone began driving immediately after coming on duty and took an early break between hours 2.5 and 3.0, he or she could drive 7 consecutive hours before reaching the 10-hour limit. If the 11-hour driving-time limit was adopted, the early break would have to occur between hours 3.5 and 4.0 to allow 7 consecutive hours of driving before reaching the end of the 11th hour. Conversely, a driver could drive until the 7th hour before taking the break, whether the daily limit was 10 or 11 hours. Assuming that truckers do nothing but drive (which is unrealistic) and want to minimize their breaks, they could take the required half-hour break anywhere between hours 2.5 and 7 of a 10-hour driving period or between hours 3.5 and 7 of an 11-hour driving period. Working beyond the 7th hour without a break is permitted, however, as long as the driver does not actually drive a CMV after the 7th hour. In practice, a driver who took a half-hour break at 6 to 7 hours after coming on duty would not be required to take a second break during the driving window of 14 hours.

The weekly limits in the current rule (60 hours on duty in 7 days or 70 hours on duty in 8 days) would remain unchanged. The 34-hour restart allowed under the current rule, which permits drivers to restart the 60- or 70-hour "clock" by taking a break of at least 34 consecutive hours off duty, would be retained, but with certain limitations. First, any restart would have to include two periods between midnight and 6 a.m. Depending on when the restart begins, 34 consecutive hours off duty could satisfy this requirement. In other instances, the restart period would have to be longer to incorporate the two nights. The two-night requirement would have no impact on the majority of drivers who regularly drive during the day. Drivers who regularly drive at night would have to take longer restarts to obtain two nights of sleep. Second, a driver would be allowed to begin another 34-hour off-duty period no sooner than 168 hours (7 days) after the beginning of the previous restart.

Limiting the restart to once in 7 days effectively reduces the number of hours a driver could be on duty and drive from an average of about 82 hours in 7 days under the current rule to an average of 70 hours. Third, the driver would have to designate whether a period of 34 hours or more off duty was to be considered a restart.

FMCSA is not proposing any changes to the sleeper-berth rule at this time. Drivers using the current rule must take at least 8, but less than 10, consecutive hours in the sleeper berth and a shorter break of at least 2 hours off duty or in the sleeper berth (in lieu of the standard 10 consecutive hours off duty). The shorter of the breaks used under the sleeper berth rule is included in the calculation of the driving window. The use of the sleeper berth rule, however, would be affected by the other changes proposed. The driving window would be 14 to 16 hours long; duty time would be limited to 13 hours. A driver using the 16-hour window could count the shorter period toward the 3 hours of breaks that the driver would have to take to reach 16 hours; the shorter period, therefore, would not reduce the 13 hours of on-duty time. When the driver uses the 14-hour window, the shorter break will reduce the 13-hour on-duty time by at least 1 hour.

FMCSA proposes to change the definition of "on duty" to allow team drivers to log as off duty up to 2 hours spent in the passenger seat immediately before or after a period of 8 or more hours in the sleeper berth while the other team member is driving. FMCSA is also proposing additional language that would exclude time spent resting in a non-moving CMV from the definition of "on duty" time.

Finally, FMCSA is proposing to make drivers and motor carriers potentially liable for the maximum penalty available if they drive or permit someone to drive 3 or more hours over the 10/11-hour driving-time limit. This provision targets egregious violations of the driving-time limits.

The Agency has attempted to structure these requirements to protect safety and health while maintaining industry flexibility and minimizing the impact on drivers working more reasonable schedules. Because the drivers who work very extensive hours are a relatively small minority, FMCSA does not anticipate that this rule would have significant adverse impact on the industry. Since the drivers who work to the limits of the current rule are those most likely to develop fatigue over the course of the day and week, a reduction in their driving hours should lead to reductions in fatigue-related crashes. Preventing these crashes and reducing relative crash risk overall to improve safety is the principal goal of the HOS regulations.

Although the Agency is primarily concerned with highway safety, FMCSA anticipates an additional benefit from reducing allowable daily and weekly work hours for the drivers with high-intensity schedules. Recent research indicates that inadequate sleep is associated with increases in mortality. This effect is believed to involve an increase in the propensity for workplace (and leisure time) accidents and in mortality due to an increase in the incidence of high blood pressure, diabetes, cardiovascular disease, and other health problems; some of these conditions could disqualify drivers for medical reasons. Since increases in hours worked are associated with decreases in hours spent sleeping, and truck drivers working high-intensity schedules get significantly less than the 7 hours of sleep required for optimal mortality, cutting back on such schedules should reduce, to some extent, mortality among these drivers. These benefits should be counted as outcomes of reductions in total work allowed to drivers.

TABLE 1—SUMMARY OF 10-YEAR COSTS AND BENEFITS FOR PROPOSED RULE

[Millions 2008$]

	Option 2	Option 3	Option 4
7% Discount Rate:			
Costs	$7,246	$3,662	$16,213
Benefits	9,913	7,562	13,232
Net Benefits	2,667	3,900	(2,981)
3% Discount Rate:			
Costs	8,748	4,394	19,639
Benefits	12,040	9,184	16,071
Net Benefits	3,292	4,789	(3,568)

III. Legal Basis

This proposed rule is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984 (1984 Act). The Motor Carrier Act of 1935 provides that "The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and, (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation" (Section 31502(b) of Title 49 of the United States Code (49 U.S.C.)).

The HOS regulations proposed today concern the "maximum hours of service of employees of * * * a motor carrier" (49 U.S.C. 31502(b)(1)) and the "maximum hours of service of employees of * * * a motor private carrier" (49 U.S.C. 31502(b)(2)). The adoption and enforcement of such rules were specifically authorized by the Motor Carrier Act of 1935. This proposed rule rests on that authority.

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles." Although this authority is very broad, the 1984 Act also includes specific requirements: "At a minimum, the regulations shall ensure that (1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators" (49 U.S.C. 31136(a)). The United States Court of Appeals for the District of Columbia Circuit (DC Circuit) has said with regard to 49 U.S.C. 31136(a)(4) that "the statute

requires the agency to consider the impact of the rule on 'the physical condition of the operators,' not simply the impact of driver health on commercial motor vehicle safety. * * * It is one thing to consider whether an overworked driver is likely to drive less safely and therefore cause accidents. Whether overwork and sleep deprivation have deleterious effects on the physical health of the driver is quite another." *Public Citizen et al.* v. *FMCSA,* 374 F.3d 1209, 1217 (DC Circuit 2004). This proposal would improve both highway safety and the health of CMV drivers.

This proposed rule is also based on the authority of the 1984 Act and addresses the specific mandates of 49 U.S.C. 31136(a)(2), (3), and (4). Section 31136(a)(1) mainly addresses the mechanical condition of CMVs, a subject not included in this rulemaking. To the extent that the phrase "operated safely" in paragraph (a)(1) encompasses safe driving, this proposed rule also addresses that mandate.

Before prescribing any regulations, FMCSA must also consider their "costs and benefits" (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are also discussed in this proposed rule.

IV. Background

A. History

For drivers of CMVs, HOS have been regulated since December 1937 when the Interstate Commerce Commission (ICC) promulgated the first Federal HOS rules. The rules were revised significantly in 1938 and 1962. The 1938 revision limited drivers to 10 hours of driving in 24 hours with at least 8 hours off duty; drivers could be on duty 60 hours in 7 days or 70 hours in 8 days. The 1962 revision dropped the 24-hour requirement, effectively allowing drivers to drive 10 hours and take 8 hours off, then drive again. (*See* the May 2, 2000, notice of proposed rulemaking (NPRM) for a detailed history of the provisions (65 FR 25540)).

The 2000 NPRM proposed a comprehensive revision of the HOS regulations in response to the ICC Termination Act of 1995. The new rules were to be science-based; the Agency collected relevant studies and completed its own comprehensive Commercial Motor Vehicle Driver Fatigue and Alertness Study, a joint undertaking with Canada and the trucking industry. FMCSA assembled an expert panel of recognized authorities on traffic safety, human factors, and fatigue to review the science and evaluate regulatory alternatives. FMCSA conducted eight nationwide public hearings on the NPRM and three 2-day public roundtable discussions. On April 28, 2003, the Agency promulgated a final rule (68 FR 22455).

The 2003 rule made significant changes in the rules for property-carrying operations. Driving time was extended from 10 to 11 hours, but the driving window was limited to 14 consecutive hours after coming on duty (as opposed to the previous 15 cumulative on-duty hours). The daily rest period was extended from 8 to 10 hours. The weekly limits were unchanged, but drivers were allowed to restart the calculation of weekly hours anytime they took an off-duty break of at least 34 consecutive hours (the 34-hour restart). Drivers using sleeper berths were allowed to accumulate the equivalent of 10 consecutive hours off in two periods, neither of which could be less than 2 hours. (*See* the 2003 final rule for a detailed discussion of the changes.)

On June 12, 2003, Public Citizen, Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers filed a petition to review the 2003 HOS rules with the DC Circuit. On July 16, 2004, the DC Circuit issued an opinion holding "that the rule is arbitrary and capricious [under the Administrative Procedure Act (APA)] because the agency failed to consider the impact of the rules on the health of drivers, a factor the agency must consider under its organic statute" and vacated the rule (*Public Citizen et al.* v. *FMCSA,* 374 F.3d 1209, at 1216). Congress then directed that the 2003 regulations would remain in effect until the effective date of a new final rule addressing the issues raised by the Court or September 30, 2005, whichever occurred first.[1]

On August 25, 2005, FMCSA published a final rule that addressed driver health issues; it also retained the 11 hours of driving, 14-hour driving window, 10 hours off duty, and the 34-hour restart (70 FR 49978). The rule revised the sleeper-berth provision to require at least 8, but less than 10, consecutive hours in the sleeper berth, providing drivers with the opportunity to obtain 7 to 8 hours of uninterrupted sleep each day. Drivers using the sleeper berth exception had to take an additional 2 hours either off duty or in the sleeper berth, which is included in the calculation of the 14-hour driving window. The 2005 rule also provided an exception for drivers who operate within 150 air-miles of their work reporting location and who drive CMVs that do not require a commercial driver's license (CDL) to operate. To enable these short-haul carriers to meet unusual scheduling demands, the driver could use a 16-hour driving window twice a week. (*See* the 2005 final rule for a detailed discussion of the changes and a discussion of driver health issues.)

Public Citizen and others challenged the 2005 rule on several grounds, as did the Owner-Operator Independent Drivers Association (OOIDA). On July 24, 2007, the DC Circuit rejected OOIDA's arguments, which focused on the sleeper-berth provision, but accepted part of Public Citizen's arguments. The DC Circuit concluded that FMCSA did not satisfy the APA's requirements to explain its reasoning and provide an opportunity for notice and comment on portions of the regulatory evaluation; the Court, therefore, vacated the 11-hour driving-time and 34-hour restart provisions (*OOIDA* v. *FMCSA,* 494 F.3d 188 (DC Cir. 2007)).

FMCSA published an interim final rule (IFR) on December 17, 2007 (72 FR 71247), to prevent disruption of both enforcement and compliance while the Agency responded to the issues identified by the Court. The IFR re-promulgated both 11 hours of driving time and the 34-hour restart. In response to the Court's findings, the preamble to the IFR included a detailed explanation of the Agency's time-on-task methodology (72 FR 71252 *et seq.*). On November 19, 2008, FMCSA published the provisions of the IFR as a final rule (73 FR 69567).

On December 18, 2008, Advocates for Highway and Automotive Safety, Public Citizen, the International Brotherhood of Teamsters, and the Truck Safety Coalitions (HOS petitioners) petitioned FMCSA to reconsider the research and crash data justifying the 11-hour driving rule and the 34-hour restart provision. FMCSA denied the petition.[2] On March 9, 2009, the HOS petitioners filed a petition for review of the 2008 rule in the DC Circuit and, on August 27, 2009, filed their opening brief. However, in October 2009, DOT, FMCSA, and the HOS petitioners reached a settlement agreement.

Pursuant to the agreement, the petition for review is in abeyance pending FMCSA's publication of this NPRM. After considering all the comments, FMCSA must publish a final rule by July 26, 2011.

[1] Section 7(f) of the Surface Transportation Extension Act of 2004, Part V, Public Law 180–310; 118 Stat. 1144.

[2] January 16, 2009, docket # FMCSA–2004–19608–3525.1.

B. Process

As part of its process for considering revisions to the HOS rule, FMCSA sought input and comments from its Motor Carrier Safety Advisory Committee (MCSAC) and from the public, including carriers, drivers, unions, safety advocacy groups, and others. The latter comments were provided at five public listening sessions. In addition, the HOS docket has been open and comments filed during this period have been reviewed.

MCSAC. MCSAC was established by the Secretary of Transportation on September 8, 2006, and is charged with providing advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations. In the fall of 2009, FMCSA asked its MCSAC to identify ideas and concepts that the Agency should consider in developing the HOS regulations. At the time, MCSAC membership was comprised of 15 experts from the motor carrier industry, safety advocates, and safety enforcement sectors.[3] In addition, three organizations (Public Citizen, the Teamsters, and the Truck Safety Coalition) participated in the meetings as guests. MCSAC met in December 2009 and February 2010 to discuss the regulations. On February 2, 2010, they forwarded a report to the Administrator. The full report is available in the Docket (FMCSA–2004–19608–3867). The committee's principles included the following:

- The rule should be simple, enforceable, and compliance should be measurable.
- FMCSA should consider expert opinion, all available data, and feedback from HOS listening sessions.
- FMCSA should consider the appropriateness (implementation vs. enforcement) of a one-size-fits-all approach.
- Safety, not profit/productivity, should be considered first and foremost.
- A guiding principle should be how driver health relates to the safety of the public.
- FMCSA should consider total cost to industry.

In the short term, MCSAC recommended that FMCSA consider:

- All available valid research on all impacts (*e.g.,* health), including new research performed since the 2008 HOS rule. Additionally, FMCSA should review studies that were not considered under the previous rulemakings (*e.g.,* shift work studies and epidemiological research findings that are related to driver health and HOS).
- Each incremental hour on duty and its effect on driver fatigue, beginning with the first hour. Determine whether there is a fatigue breakpoint (a point in time after which performance declines).
- Driving schedules in light of circadian rhythm research and crash rates by time of day, while balancing the effects on the general public.
- Industry safety performance data under the current rule (*e.g.,* crash data, fatalities, injuries, compliance-related data, exposure data).
- Existing data on the total cost to society of all fatigue-CMV crashes (not just fatal or injury crashes) (*e.g.,* economic paralysis of section of city/State to clear a CMV crash; medical care for those seriously injured without insurance; lost productivity; fuel costs; air pollution; costs to families of persons injured).
- Current practices, research, and technologies within other transportation modes and industries regarding fatigue. Consider international approaches to HOS, including those of Canada, the European Union (EU), Australia, and Japan. For example, EU requires electronic logging devices with well-educated enforcement. Also, in Canada, drivers may "borrow" driving time from the following day while meeting a weekly average.
- Allowing more flexibility with respect to rest breaks and driving time, including, but not limited to, sleeper berth rest breaks.

Listening sessions. To solicit further information, FMCSA held five public listening sessions in January and March 2009, in Washington, DC, Dallas, TX, Los Angeles, CA, Davenport, IA, and Louisville, KY. The Davenport session was held adjacent to a large truck stop and the Louisville session was held at the Mid-America Trucking Show to encourage participation by drivers. The sessions were webcast, and comments were also submitted via toll-free telephone lines. Approximately 300 individuals and organizations spoke at the sessions. The majority of the speakers were drivers and carriers or associations representing them; most of the drivers who spoke were in for-hire, long-haul, truck-load (TL) operations.

In general, the carriers, drivers, and their associations supported the existing rule with two exceptions. They supported maintaining 11 hours of driving time and the 34-hour restart. Carriers and their associations stated that the 11 driving hours provided flexibility and that some carriers had redesigned routes and schedules to use the full 11 hours; they believed that changing to a shorter period would be costly. Drivers indicated that they use the restart frequently; when away from home, they may take no more than 34 hours off; at home, the restart is usually longer. Some drivers argued for a shorter restart (24 hours or less).

Many, but not all, drivers objected to the 14-hour consecutive period, saying that it forced them to drive when they were tired because breaks were included in the calculation of the driving window. They also said that the rule made it difficult to avoid congestion because they had to drive during rush hours; under the pre-2003 rule, they could have pulled off the road and waited until congestion eased without reducing their available duty hours. Drivers sought more flexibility. Specifically, they asked FMCSA to make the 14-hour period cumulative (*i.e.,* off-duty time would not be included in calculation of the driving window) or allow the driving window to be extended to 16 or 18 hours. A few drivers supported the current 14-hour rule, stating that it prevented carriers and brokers from forcing them to log waiting time at shippers and receivers as off duty so they could work longer days.

Many drivers and carriers objected to the existing sleeper berth rule that allows 10 hours off duty to be taken in two periods, one of 8 to 10 hours and the other of 2 or more hours, with the shorter period included in the calculation of the driving window. Team drivers in particular wanted the flexibility to be able to divide their 8-hour sleeper berth time into shorter periods (*e.g.,* 4 + 4 hours, 5 + 3 hours, *etc.*). Drivers who spoke on this issue asked that the shorter period not be included in the calculation of the duty period.

Representatives of the safety advocacy groups and the Teamsters generally supported the 14-consecutive-hour provision, but opposed 11 hours of driving and the 34-hour restart because these provisions allow long days of continuous work and work weeks up to 84 hours in 7 days. They urged FMCSA to consider the body of research on the effects of long hours on performance and health and to establish a 24-hour circadian schedule.

Drivers also raised several issues that affect them, but are outside of FMCSA's statutory authority. The number of available areas where truck drivers can safely stop and rest, although never adequate, has been reduced in the last few years as some States have closed rest areas for budgetary reasons. Drivers stated that the lack of safe rest areas

[3] Eight new members were added to the MCSAC on June 8, 2010. Representatives of the Teamsters and the Truck Safety Coalition were among the groups added to the MCSAC. *See http://mcsac.fmcsa.dot.gov/members.htm.*

made it difficult for them to find a place to take their 10-hour off-duty period. A number of drivers also stated that the current methods of paying many drivers (by the mile or load) provide shippers with no incentive to load or unload a truck promptly. Independent owner-operators and smaller carriers complained that they could spend 30 to 40 hours of unpaid time a week waiting for shippers. Finally, drivers stated that anti-idling laws adopted by some State and local governments to reduce pollution can make it difficult to sleep because they cannot run their air conditioning or heating. FMCSA acknowledges these complaints; but, as explained in previous HOS rulemakings, the Agency does not have the statutory authority to address these issues.

C. Description of Industry

The trucking industry comprises hundreds of thousands of carriers and millions of drivers moving goods locally or in long hauls between cities. The industry is diverse, and different sectors have different operational characteristics. The industry can be divided in a number of ways: Private versus for-hire; long-haul versus short-haul; TL versus less than truckload (LTL). Private carriers are not trucking firms; they are manufacturers, distributors, or retailers that move their own goods among factories, distribution centers (warehouses), and retail outlets. Their drivers generally operate on a regular basis over routes set by the locations of their own facilities and those of their customers. For-hire carriers are in the transport business; they move goods for their customers. An LTL carrier usually picks up and delivers small shipments in a local area served by one of its terminals. Shipments are consolidated into loads for large trucks that make long runs to the firm's terminals in other areas. Moves between terminals are almost always overnight on regular routes. The goods moved overnight are delivered the next day by the local drivers at the destination terminal. The TL carriers typically pick up a full load from a shipper and move it directly to the receiver of the goods. Some of their business is regular and predictable under contracts or less-formal agreements. Much of their business is almost random in nature, movements from one place to another being sold and booked on a daily basis. Drivers in random service may not know where they will be at the end of each day. Their runs are often made by day, but many also require night-time driving. Short-haul drivers operate within a local area; most are not exclusively night-time drivers. Their routes may vary day by day, but they are always in the same general area. They may spend a good part of each day loading and unloading at multiple locations. Although there are exceptions, most long-haul drivers do not load or unload the cargo.

The various segments of the industry are affected differently by HOS provisions. Many short-haul drivers, including unionized drivers who mostly engage in local or LTL operations, operate well within all of the provisions of the rule. LTL firms and many private carriers have set their routes and terminals to stay within the HOS rule. Those who are most affected are long-haul TL carriers. According to the 2007 Commodity Flow Survey, more than 95 percent of the tonnage moved by private carriers is transported less than 250 miles and less than 1 percent is carried more than 500 miles; 500 miles is about the maximum for a 1-day trip. About 12 percent of the tonnage moved by for-hire carriers is transported more than 500 miles; only 4 percent is transported 1,000 miles or more. Overall, 93 percent of the tonnage moved solely by truck is transported in trips of 500 miles or less.[4] This percentage may be rising because a number of the largest TL carriers are shifting to intermodal operations, putting cargo on intermodal trains for moves that require more than a day and making all-truck moves only in regional operations.

V. Agency Goals

FMCSA set three primary goals as it developed this proposed rule. First, the rule provisions should improve safety by reducing driver fatigue in a cost-effective, cost-justified manner. Second, the rule should ensure that the requirements do not have an adverse effect on driver health. Third, the rule should provide drivers with some flexibility in their schedules to encourage them to take rest breaks when they need them. This section discusses the general rationale for these goals.

A. Safety—Fatigue

A fundamental purpose of the HOS regulations is to reduce crash risk in order to improve safety, and as elaborated at length, the Agency has concluded that the proposed rules will have significant safety benefits. Ideally, the Agency would have data to measure crash risk along all of the dimensions for which regulations are proposed. Because the Agency has been not been able to gather such data, it has based its analysis, in significant part, on share of crashes that are fatigue-coded. The Agency recognizes that using share of crashes that are fatigue-coded could have two possible problems:

a. Accident inspectors may be more likely to code crashes as fatigue-related if the driver has been on the road longer.

b. The share of crashes that are coded as fatigue-related may conceivably increase because the share of crashes caused by other factors goes down. There could be no increase in the *risk* of a fatigue-related crash (the central question), but an increase in the *share* of fatigue-related crashes.

Nonetheless, while the data are not as complete as FMCSA would like them to be, the Agency aimed to limit, to the extent possible, the likelihood that drivers will be fatigued, either when they come on duty or during or at the end of a working period. Fatigue affects performance well before a person becomes sleepy. As a person becomes fatigued, reaction times slow, concentration becomes more erratic, and decision-making is slowed; all of which affect the ability of a driver to respond quickly to a hazardous driving situation. Eventually fatigue reaches a point where the person has trouble staying awake and may be unable to avoid falling asleep.

The fatigue that this rule addresses is primarily that caused by lack of adequate sleep (as opposed to physical fatigue caused by strenuous activity). A regulation cannot compel a driver to sleep when off duty. FMCSA can only ensure that the hours that a driver is allowed to work in a day and a week do not interfere with the opportunity to obtain adequate sleep if the driver works the maximum hours permissible. The studies of restricted sleep show that over days of mild, moderate, or severe sleep restriction (1) alertness and performance degrade as cumulative sleep debt rises; (2) even mild sleep restriction (loss of less than 1 hour of sleep a day) degrades performance over days. Seven to 8 hours of consolidated night-time sleep in each 24 hours appear to sustain performance over multiple days, if not longer, for most people.[5]

[4] Bureau of Transportation Statistics (RITA, DOT) and U.S. Census Bureau, "2007 Commodity Flow Survey," April 2010. FMCSA–2004–19608–4024.

[5] Belenky, G., Wesensten, N.J., Thorne, D.R., Thomas, M.L., Sing, H.C., Redmond, D.P., Russo, M.B. & Balkin, T.J., "Patterns of Performance Degradation and Restoration During Sleep Restriction and Subsequent Recovery: A Sleep Dose-Response Study," *Journal of Sleep Research,* Vol. 12, No. 1, March 2003, pp. 1–12. FMCSA–2004–19608–3959.

Van Dongen, H.P., Maislin, G., Mullington, J.M. & Dinges, D.F., "The Cumulative Cost of Additional Wakefulness: Dose-Response Effects on Neurobehavioral Functions and Sleep Physiology

Continued

Sleep deprivation is classified as acute or chronic. A person who gets little or no sleep for 24 hours will suffer from acute sleep loss; that person's cognitive ability at the end of the period of being awake for 24 hours is significantly impaired. Research indicates that people can recover completely from acute sleep loss with 1 or 2 nights of adequate sleep (7–8 hours). A person who gets an hour or two less sleep per night than needed develops chronic sleep deprivation. Over 5 days, the person accumulates 5 to 10 hours of sleep debt. Sleep research indicates that people who are chronically sleep deprived need at least 2 nights of adequate sleep to recover. Depending on the level of sleep deprivation, individuals may stabilize at a lower level of performance and believe they have recovered, but their performance will deteriorate more rapidly across waking hours.[6] Belenky, G., *et al.* (2003) concluded that this stabilization makes it difficult to recover rapidly to the same level of performance that existed prior to the sleep deprivation even when a person is able to obtain adequate sleep. Van Dongen, H.P., *et al.* (2003) found that chronic sleep restriction to 6 hours or less produced cognitive performance deficits equivalent to up to 2 nights of total sleep deprivation.

The central issue that FMCSA must consider in developing HOS regulations involves *the relative crash risk associated with each hour of driving.* It would be valuable, for example, to know the crash risk in the ninth, tenth, and eleventh hours, and to compare that risk to the risk in other hours. However, as noted above, FMCSA needs additional data to estimate relative crash risk in each hour of driving and hence has decided to consider, as a proxy, how many hours drivers can consistently work over a period of time without becoming sleep-deprived. There are two approaches to answering that question. The Agency can examine data on fatigue-related crashes, and it can review research that measures the amount of sleep that drivers are getting under the existing rule and compare that to the science on sleep deprivation.

As FMCSA discussed at length in previous HOS rulemakings, the percentage of CMV crashes associated with fatigue is not known. Estimates range from the 1.5 percent to 2.1 percent found in the Trucks in Fatal Accident (TIFA) data[7] to 13 percent in the Large Truck Crash Causation Study (LTCCS)[8] to even higher percentages mentioned in other studies.[9] Because fatigue is difficult to determine after the fact, it is often not coded in crash reports, while, in some cases, it may be coded even when the driver was not fatigued because the driver's log showed long hours at work and investigators assumed fatigue. It is generally believed, however, that fatigue-coding understates the level of fatigue-related crashes. In 2008, large trucks were involved in approximately 365,000 recorded crashes, 3,700 of which involved fatalities, 64,000 involved injuries only, and 297,000 were property-damage only.[10] Even if fatigue is a contributing factor in only a small percentage of crashes, it still has a profound safety impact.

During the 2010 listening sessions, a number of the carriers and their associations argued that the sharp decline in fatal crashes in the past several years is proof that the long hours that may be worked under the existing rule have not reduced safety and may have improved it. The crash rates for CMVs have been declining since 1979; the rates went up slightly in 2004 and 2005 before declining again. Neither the slight increase after the adoption of the existing rule nor the decline thereafter can be definitely associated with the HOS rule. Crashes have multiple causes and the consequences of a crash are affected by many factors—including speed, size of vehicles involved, roadway conditions, and improved safety features in vehicles.

The percentage of fatigue-coded crashes in TIFA fluctuated between 1.5 percent and 2.1 percent between 1998 and 2007. The number of CMV driver fatalities rose 14 percent between 2003 and 2007 (heavy truck vehicle miles traveled rose only 4 percent), but declined sharply in 2008. (Driver fatalities occur more often in single vehicle crashes, which are more likely to be associated with fatigue.) The decline in 2008, which the industry noted, also occurred in passenger-vehicle-only crashes. In general, crashes decline in recessions, as they did in 1982–83, 1991–92, and 2001–02. The recent decline in crashes is welcome; but it cannot be attributed to any single factor affecting crashes, including implementation of the 2003 rule.

Because the crash data understate fatigue and because crashes often have multiple causes, which make it difficult to determine the role of fatigue even when it is suspected, FMCSA has to look at other research to determine whether the rules require drivers to take enough off-duty time to allow them to obtain sufficient sleep to avoid being fatigued. As noted above, sleep research indicates that humans need between 7 and 8 hours a night to avoid sleep deprivation and accumulating sleep debt. There are individual variations in sleep needs, but the Agency must base its assessment of the regulation on the average driver, not the outliers who need considerably less or more sleep to avoid fatigue. In the Virginia Tech Transportation Institute (VTTI) naturalistic driving study of CMV drivers operating under the 2003 rule, measured sleep averaged 6.15 to 6.28 hours (the average includes both work days and days off); the average on work days was 5.6 hours.[11] These drivers drove at night, which would have reduced their sleep, but they were not working full 14-hour days (less than half of the work shifts identified included driving in the 10th hour; a third did not include driving beyond 8 hours).[12]

Two other surveys covered drivers after the implementation of the 2003 rule. Both asked drivers about the amount of sleep they obtain on working days. Research indicates that self-reports of sleep overestimate sleep by 20 to 60 minutes, particularly for sleep times below 7 hours.[13] Nonetheless the

from Chronic Sleep Restriction and Total Sleep Deprivation," *Sleep,* Vol. 26, No. 2, March 15, 2003, pp. 117–126. FMCSA–2004–19608–3993.

[6] Cohen, D. A., Wang, W., Wyatt, J. K., Kronauer, R. E., Dijk, D.J., Czeisler, C. A. & Klerman, E. B., "Uncovering Residual Effects of Chronic Sleep Loss on Human Performance," *Science Translational Medicine,* Vol. 2, Issue 14ra3, January 13, 2010. FMCSA–2004–19608–4021 and 4021.1.

Balkin, T.J., Rupp, T., Picchioni, D. & Wesensten, N.J., "Sleep Loss and Sleepiness: Current Issues," *CHEST,* Vol. 134, No. 3, September 2008, pp. 653–660. FMCSA–2004–19608–3956. Belenky, G., *et al.* (2003).

[7] Jarossi, L., Matteson, A. & Woodrooffe, J., "Trucks Involved in Fatal Accidents Factbook 2007," 2010. FMCSA–2004–19608–4007.

[8] FMCSA, "Large Truck Crash Causation Study Summary Tables," 2007. Retrieved June 8, 2010, from: *http://ai.fmcsa.dot.gov/ltccs/data/documents/SummaryTables.pdf.* FMCSA–2004–19608–3971.

[9] National Transportation Safety Board (NTSB) has studied single-vehicle crashes and crashes in which the truck driver was killed and estimated that 31 percent of fatal-to-driver accidents may be fatigue-related.

[10] FMCSA, "Large Truck and Bus Crash Facts 2008," March 2010. Retrieved June 8, 2010, from: *http://www.fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008LargeTruckandBusCrashFacts.aspx.*

[11] The 6.15 hour average was derived from all days on which data were collected (excluding vacations); the 6.28 hour average was based on only weeks in which there was data for all 7 days.

[12] Hanowski, R.J., Hickman, J., Fumero, M.C., Olson, R.L. & Dingus, T.A., "The Sleep of Commercial Vehicle Drivers Under the 2003 Hours-of-Service Regulations," *Accident, Analysis and Prevention,* Vol. 39, No. 6, November 2007, pp. 1140–1145. FMCSA–2004–19608–3977.

[13] Lauderdale, D. S., Knutson, K. L., Yan, L.L., Liu, K. & Rathouz, P.J., "Sleep Duration: How Well Do Self-Reports Reflect Objective Measures? The CARDIA Sleep Study," Epidemiology, Vol. 19, No.

results are consistent with the findings of other research. The Truck Driver Fatigue Management Survey conducted for FMCSA collected data in 2005 from almost 2,300 unionized LTL drivers.[14] About 60 percent of the respondents drove at night; most respondents drove routes that required fewer than 10 hours of driving and returned home daily. The survey found similar levels of sleep (average 6.23 reported hours of sleep prior to starting a run). The drivers reported an average 6.94 hours of sleep in 24 hours on working days, which means that drivers estimated they were getting about 42 minutes of additional sleep during the working day.

The Bureau of Labor Statistics' (BLS) American Time Use Survey (ATUS) has participants complete a daily log of time spent on various activities for the same day of the week for 60 weeks. For example, a participant will record time spent working, eating, exercising, watching television, and checking e-mail every Monday for 60 weeks.[15] A National Institute for Occupational Safety and Health (NIOSH) analysis of ATUS data on truck drivers from the 2003 to 2006 surveys found that while drivers reported an extra hour of sleep in 2004 compared to 2003, the amount of sleep reported had declined to close to the 2003 level by 2006 and that sleep on working weekend days also declined. The drivers who participated in the survey appear to be mostly local drivers.[16] The decline in sleep as work hours increase is consistent with previous research on CMV drivers that has showed sleep time is a function of the amount of off duty time available, *i.e.,* as off duty time increases so does average nightly sleep time.[17] Table 2 presents the reported sleep of drivers in the 2008 ATUS by hours worked.[18]

TABLE 2—HOURS SLEPT BY HOURS WORKED—2008 ATUS

Hours worked	Number of driver respondents	Driver average hours slept per day
6	67	8.17
7	61	7.85
8	48	7.70
9	40	7.53
10	32	7.33
11	18	7.34
12	10	6.56

Although the sleep measured by VTTI, which provides the most reliable data on sleep under the current rule, is better than many drivers obtained under the pre-2003 rule, the weekly average (with 2 nights off) of slightly more than 6 hours a night is not enough sleep. The Truck Driver Fatigue Management Survey indicated that fatigue continues to be an issue for a substantial percentage of drivers. About 38 percent of the drivers said they sometimes and 6.7 percent said they often had trouble staying awake while driving. About 13 percent reported that they often or sometimes fell asleep while driving; 47.6 percent said they had fallen asleep while driving in the previous year. Although only 23.4 percent said they often or sometimes felt fatigued while driving, 65 percent reported that they often or sometimes felt drowsy while driving. A third of the drivers reported that they became fatigued on a half or more of their trips. The factor that most drivers stated contributed to fatigue while driving was the amount of sleep before the trip; weather and hours of driving were the next most frequently cited factors.

Drivers at the listening sessions frequently stated that they know when they are tired and, therefore, are the best judges of when they need rest and how much. Research, however, indicates that people are not good at assessing their own level of fatigue. In sleep research on CMV drivers, self-assessments of fatigue and sleepiness show little if any relationship to measured performance and sleepiness.[19] People who are chronically fatigued do not recognize performance impairment; some do not even recognize sleepiness.[20] Drivers appear to equate tiredness with being sleepy, but performance is impaired well before a driver becomes sleepy. Some drivers at the listening sessions noted that they needed naps in the middle of their working day even though they had a full 10-hour off-duty period prior to starting, which indicates that they are not obtaining adequate sleep during the long off-duty period. The importance of adequate sleep was shown in the VTTI study, which found that in the 24 hours before a critical incident (*i.e.,* crashes, near crashes, and crash-relevant conflicts such as unintended lane deviations), the average sleep was only 5.2 hours, about 0.4 hours less than an average working day. FMCSA believes that fatigue continues to be a problem for CMV drivers working the longest hours. The 2003 rule, however, does not appear to have decreased the daily hours worked, which may partly explain why drivers continue to obtain inadequate sleep. The NIOSH analysis of ATUS data on truck drivers, discussed above, found an increase in drivers working longer hours since the 2003 rule became effective. FMCSA requests comments on additional studies the Agency should consider in developing the final HOS rules.

Ideally, if available, the Agency would use post-2003 data to provide a before and after analysis of the 2003 change from a 10- to an 11- hour limit. It might compare States with different hours limits. Under this approach, the Agency could use the probability of a crash in each hour of driving, not the proportion of crashes that are fatigue-related.

B. Driver Health

Adverse effects on driver health must be carefully considered in the formulation of HOS regulations. Driving a CMV, particularly in regional and long-haul operations, involves both long hours of work and long hours of continuous sitting. A growing body of research across industries (described in greater detail in the regulatory impact analysis (RIA) available in the docket) indicates that long hours of work are linked to sleep loss, which in turn is linked to obesity, cardiovascular disease (CVD), diabetes, and a variety of other health impacts.[21] Long hours are also independently associated with obesity.[22] There is no simple linear relationship between the "driver's life" of long hours, protracted sitting, and moderate-to-severe sleep deprivation and one or more health outcomes.

6, November 2008, pp. 838–845. FMCSA–2004–19608–4011.

[14] Dinges, D.F. & Maislin, G., "Truck Driver Fatigue Management Survey," May 2006. FMCSA–2004–19608–3968.

[15] Bureau of Labor Statistics, "American Time Use Survey, Census Code 9130, Drivers/Sales Workers and Truck Drivers." Accessed August 18, 2010 from: *http://www.bls.gov/tus/*. FMCSA–2004–19608–4023.

[16] Chen, G.X., Amandus, H. E. & Cezar, C., "Do the Revised Hours of Service Regulations Change Truck Driver Work and Sleep Time?" Chart from the 137th APHA Annual Meeting, November 7–11, 2009. FMCSA–2004–19608–3541.

[17] Balkin, T., Thorne, D., Sing, H., Thomas, M., Redmond, D., Williams, J., Hall, S. & Belenky, G., "Effects of Sleep Schedules on Commercial Vehicle Driver Performance," 2000. FMCSA–2004–19608–2007.

[18] Data extracted from the Bureau of Labor Statistics, "American Time Use Survey, Census Code 9130, Drivers/Sales Workers and Truck Drivers," 2008. FMCSA–2004–19608–4023.

[19] Balkin, T.J., *et al.* (2008); Van Dongen, H.P., *et al.* (2003).

[20] Balkin, T.J., *et al.* (2008); Van Dongen, H.P., *et al.* (2003).

[21] Knutson, K.L., Spiegel, K., Penev, P. & Van Cauter, E., "The Metabolic Consequences of Sleep Deprivation," *Sleep Medicine Review,* Vol. 11, No. 3, June 2007, pp.163–178. FMCSA–2004–19608–4010.

[22] Di Milia, L. & Mummery, K., "The Association Between Job Related Factors, Short Sleep and Obesity," *Industrial Health,* Vol. 47, 2009, pp. 363–368. FMCSA–2004–19608–3967.

Rather this relationship must be viewed as a network of mutually reinforcing effects that result in varying levels of risk for particular outcomes such as CVD. Table 3 reflects current scientific thinking on how this network of relationships acts on health:

TABLE 3: HEALTH HABIT AND RISK RELATIONSHIPS

Long hours	→ ...	Insufficient sleep.
	→ ...	Obesity.
	→ ...	CVD.
Insufficient sleep ..	→ ...	Obesity.
	→ ...	High blood pressure.
	→ ...	Diabetes.
Sedentary pattern	→ ...	Obesity.
	→ ...	Metabolism.
	→ ...	Increased risk of mortality.
Obesity	→ ...	Obstructive sleep apnea.
	→ ...	High blood pressure.
	→ ...	CVD.
	→ ...	Stroke.
	→ ...	Diabetes.
	→ ...	Arthritis.
	→ ...	Other disease.

The RIA includes a detailed discussion of research related to sleep loss, health effects related to sleep loss, and particularly the biochemical mechanisms that link sleep loss with obesity, diabetes, and CVD. It is important to note that the links between sleep loss and many of the health effects are not simply correlations; in many cases, scientists have been able to identify the biochemical changes associated with sleep deprivation that produce the health effects.[23]

Although sleep loss, long hours, and sedentary work are not the only factors contributing to obesity, the level of obesity among CMV drivers is dramatically higher than among U.S. adult male workers as a whole—67 percent higher for all obesity (about 30 percent of all adult male workers [24] are obese versus 50 [25]–55 percent of CMV drivers [26]), and about 3 times greater for body mass indices (BMIs) >40 (4.2 percent of all adult male workers versus 12 percent of CMV drivers).[27] As discussed in detail in the RIA, chronic sleep loss is associated with increased mortality. The increased mortality rates associated with obesity are much higher. Hauner, H. (2009) cites a study, published in 2009, on BMI and cause-specific mortality in 900,000 adults that "showed an average loss of 2 to 4 years of life with a BMI between 30 and 34.9; and a BMI between 40 and 45 shortened life by an average of 8 to 10 years." [28] Finkelstein, E.A., *et al.* (2010) did not find significant impacts below a BMI of 35, but found that BMIs of 35 to < 40 reduced life span for whites by 4 to 5 years; BMIs of 40 and above reduced life spans by 8 to 10 years.[29] Beyond mortality effects, the health conditions that result from sleep deprivation and sedentary work are associated with higher health care costs and the risk that drivers who develop the conditions may fail to meet the medical standards for driving a CMV.

In the 2005 final rule, FMCSA discussed in detail other potential factors associated with health effects, including exposure to particulate matter in diesel fumes, vibration, noise, *etc.*[30] For all of these, it was difficult to develop a dose-response relationship that relates specific hours of exposure to particular health impacts. For diesel exposure, there is the confounding factor that drivers may be less exposed when driving than when stopped at truck stops or terminals. FMCSA supported research conducted by the University of Tennessee to examine factors that are suspected to influence health and performance of CMV drivers—noise, vibration, and cabin air quality of heavy-duty diesel vehicles. These variables were measured both while vehicles were driven and while they were parked with the engine idling. The resulting data will serve as a baseline from which similar future studies can determine if new truck designs have changed the existing state of these conditions for drivers. Twenty-seven trucks (model years 2006–2008) from four manufacturers were tested. Overall, in-cab noise levels were found to be below the 8-hour standard limits established by the Occupational Safety and Health Administration and FMCSA. Average vibrations from the seats were generally found to be below International Standards Organization-established (but non-regulatory) standard exposures for an 8-hour driving day. Air quality was determined by measuring in-cab concentrations of carbon monoxide, nitrogen oxides and particulate matter less than 2.5 microns aerodynamic diameter. The results indicated that trucks have a tendency to self-pollute the cabs during extended periods parked with the engine idling; on-road concentrations were several orders of magnitude lower. Carbon monoxide concentrations were well below standard permissible exposure levels. During several parked-idling scenarios, particulate matter concentrations exceeded air quality standards for 24-hour and annual averages.[31]

FMCSA has not changed the conclusions it drew in 2005 on health impacts regarding noise, vibration, and air quality. FMCSA has not found any other research that changes the conclusions regarding these health impacts. However, FMCSA emphasizes that it is important to study the chronic conditions of truck drivers. We therefore seek information from the public on conditions that truck drivers face.

C. Flexibility

As discussed above, drivers at the public listening sessions asked FMCSA to provide some flexibility in the rules so that they could take breaks when they need rest or encounter unexpected delays. FMCSA agrees that drivers should be encouraged to take rest when they need it and has included provisions to incorporate flexibility into schedules. In developing the proposed rule, however, FMCSA was aware that the flexibility that some drivers were seeking, if unconstrained, would simply allow them or their employers to build into their schedules the extended hours that the 2003 rule was intended to curb. FMCSA, therefore, strove to balance flexibility with the need to limit hours of work.

[23] Banks, S. & Dinges, D. F., "Behavioral and Physiological Consequences of Sleep Restriction," *Journal of Clinical Sleep Medicine,* Vol. 3, No. 5, August 15, 2007, pp. 519–528. FMCSA–2004–19608–3957.

[24] Flegal, K.M., Carroll, M.D., Ogden, C.L. & Johnson, C.L., "Prevalence and Trends in Obesity Among U.S. Adults, 1999–2008," *Journal of the American Medical Association,* Vol. 303, No. 3, 2010, pp. 235–241. FMCSA–2004–19608–3970.

[25] RoadReady data provided to FMCSA.

[26] Martin, B.C., Church, T.S., Bonnell, R., Ben-Joseph, R. & Borgstadt, T., "The Impact of Overweight and Obesity on the Direct Medical Costs of Truck Drivers," *Journal of Occupational and Environmental Medicine,* Vol. 51, No. 2, February 2009, pp. 180–184. FMCSA–2004–19608–4004.

[27] BMI is a measure of body fat based on height and weight. Normal weight is considered a BMI of 18.5 to 24.9. BMI between 25 and 29.9 is considered overweight. BMIs above 30 are considered obese.

[28] Hauner, H., "Overweight—Not Such a Big Problem," *Deutsches Ärzteblatt International,* Vol. 106, No. 40, 2009, pp. 639–640. FMCSA–2004–19608–3979.

[29] Finkelstein, E.A., Brown, D.S., Wrage, L.A., Allaire, B. T. & Hoerger, T.J., "Individual and Aggregate Years-of-Life-Lost Associated with Overweight and Obesity," *Obesity,* Vol. 18, No. 2, February 2010, pp. 333–339. FMCSA–2004–19608–4006.

[30] 70 FR 49983, *et seq.;* August 25, 2005.

[31] Fu, J. S., Calcagno, J. & Davis, W.T., "Improving Heavy-Duty Diesel Truck Ergonomics to Reduce Fatigue and Improve Driver Health and Performance," Report # FMCSA–RRR–10–010.

VI. Discussion of Proposed Rule

A. Driving Time

For the reasons explained below, while FMCSA views the 10-hour driving limit as the currently preferred option, FMCSA understands that available data are susceptible to more than one interpretation and, consequently, is considering both a 10-hour driving limit and an 11-hour driving limit within one duty day. Commenters are therefore encouraged to submit data or studies that would allow FMCSA to calculate more effectively the difference, if any, in crash risk between a 10- and an 11-hour driving limit. Such a calculation would be especially important in developing benefits estimates.

FMCSA seeks information on the increased probability of a fatigue-related crash during the 11th hour; to obtain such information, FMCSA seeks information on the percentage of total number of hours driven after the 10th hour. With respect to cost estimates, FMCSA seeks information regarding the impact of eliminating the 11th hour of driving on logistics, location centers, distribution centers, just in time inventories, competitiveness with global markets, and delivery of perishable goods. With respect to benefits and costs, FMCSA seeks information with respect to any other process/logistics aspects of driving hours not captured in safety, productivity of drivers, and driver health.

The motor carrier industry operated under a 10-hour driving limit for decades prior to the 2003 rule. FMCSA acknowledged in past rulemakings that the risk associated with driving increases with the number of hours driven. Data from the LTCCS and TIFA show that the prevalence of fatigue-related crashes increases with hours driven, most notably between the 10th and 11th driving hours. LTCCS also found the probability of having a fatigue-coded crash increased with hours worked and awake. Any person driving 11 hours rather than 10 is likely to have been working for a longer period.

The approach to estimating the effects of long driving hours on crash risks assumes that higher ratios of fatigue-related crashes to total crashes implies higher crash rates. It is mathematically possible, though, that the increase in this ratio could come about because the denominator—the total number of crashes—is falling at a faster rate than fatigue-involved crashes as driving hours increase, not because fatigue increases. In other words, crash rates due to weather, mechanical failure, traffic, or road conditions may fall, as each driver accumulates more hours on the road; and this could make it appear that fatigue is a growing problem whereas it is actually stable. Because fatigue-related crashes more than triple over a long driving day, however, the incidence of crashes caused by other factors would have to drop precipitously for this explanation of the increasing ratio of fatigue crashes to hold. The Agency has no evidence for a pattern in which greater hours on the road would be associated with systematic reductions in crash causes other than fatigue, let alone a pattern so dramatic as to explain the increasing rate of fatigue-related crashes. Hence, the Agency is using the share of fatigue-related crashes in lieu of data on the relative crash risk at each hour.

Generally, studies of time-on-task fatigue have not determined whether, let alone when, the driver took breaks during the driving window, how long a driver had been awake or on duty, or how many hours the driver had worked that week. All of these factors could have an impact on fatigue and on the likelihood of crashes in the later hours of a work day.

The VTTI naturalistic driving study, sponsored by DOT and used for other distracted driving rulemakings, found no increase in risk between the 10th and 11th hours of driving.[32] Indeed, this study found that the first hour of driving is the riskiest and that there is little, if any, difference in risk among other hours. This is significant because the VTTI study is one of the few research studies that looks at 11th hour crash risk using data from the period after 2003, when 11th hour driving became legal for interstate as well as intrastate drivers. This study has been published and subject to peer review.

For several reasons, however, the VTTI study does not appear to be definitive. First, it involved a small sample size of 102 drivers that was not representative of the trucking industry. Second, the study looks at the risk of critical incidents, which include near-crashes and crash-avoidance responses, as well as actual crashes. A definitive link between critical incidents and crash risk has not been established. Third, the study involved drivers who were, with their knowledge, observed by video cameras and other electronic equipment. It is possible that this may have led drivers to behave more carefully than drivers would have in the absence of observation, leading to an overall underestimate of crash likelihood, and possibly an underestimate of the risk during the eleventh hour. (Note that the observation occurred at all hours and hence the question is whether the observation effect, if it existed, eliminated what would otherwise be an elevated risk in the eleventh hour. There is no reason to believe that being observed would cause drivers to be relatively more careful when driving longer hours than when driving shorter hours.) Fourth, drivers and carriers who participated in the video-surveyed study did so voluntarily, which could skew the study towards participation from more safety-conscious drivers and carriers.

Ideally, FMCSA would want to compare the number of serious crashes in each hour of driving after an extended break to the total driving time by hour of driving or, alternatively, vehicle miles traveled by hour. Conceptually, the degree to which the distribution of crashes falls into later driving hours relative to the distribution of driving would indicate the change in risk for longer trips. The data set would have to be reasonably representative of the drivers affected by the regulations; large enough to provide an accurate picture for individual hours, despite the rarity and randomness of crashes and the relatively small fraction of driving in the later hours; use an unbiased measure of hours; and cover a period in which long driving hours were legal. Furthermore, data on other factors that are known to affect fatigue and crash risks—total time on duty that day and previous days, short breaks, opportunities for restorative rest, time of day, and experience, for example—would have to be included in the data set as well, to allow the time-on-task effect to be isolated.

A data set meeting these criteria is not available at this time. The Agency is requesting commenters to provide any statistically reliable data that would allow specification of relative crash risk of each hour of driving. An answer would turn on knowing the total number of crashes in each hour and the percentage of driving takes place in each hour. The Agency is also interested in knowing whether the risk of fatigue-related crashes increases with additional hours awake or on task, or if the relative crash risk (of all crashes not just the likelihood that crashes will be coded as fatigue) does not increase in later hours, as the VTTI study suggests. There are some large samples of crash data that include the number of hours

[32] Hanowski, R.J., Hickman, J.S., Olson, R.L. & Bocanegra, J., "Evaluating the 2003 Revised Hours-of-Service Regulations for Truck Drivers: The Impact of Time on Task on Critical Incident Risk," *Accident, Analysis and Prevention,* Vol. 41, No. 2, March 2009, pp. 268–275. FMCSA–2004–19608–3978.

of driving, including the LTCCS (published but not peer reviewed) and TIFA; but the time periods these cover are largely or entirely before the HOS rules were changed in 2003. They are also deficient, to varying degrees, in the availability and reliability of information on driver schedules and other factors that affect crash risks. Even more seriously, these studies do not directly provide information on the distribution of all driving by hour for either the drivers involved in the crashes or for comparable drivers. In other words, the data sets provide the numerator for the rate of crashes per hour, but not the denominator.

It is possible to develop distributions of all driving by hour (through surveys, for example), but these cannot be used along with crash data for a different population without biasing the results to an unacceptable degree. Researchers have also collected data on both crashes and total driving hours for the same populations; but, to date, these studies have had samples too small (and narrow, in terms of their subjects' characteristics) to give reliable results on long hours. FMCSA is currently sponsoring a study based on schedule data collected by electronic logs that should be able to solve most of the problems in this type of research, but that study is not complete as of the time of the analysis. Given the imprecise but demonstrated relationship between fatigue, time-on-task, hours awake, and hours worked, there is a reasonable argument for limiting driving time to 10 hours.

Before making a final decision, however, FMCSA is seeking additional studies or data that examine, in greater detail, the differences between driving in the 10th or the 11th hours. FMCSA is also interested in data that indicate when and how frequently the 11th hour is used. It seeks data on how much of the 11th hour is used when a driver goes into the 11th hour. For example, on days in which the driver both picks up and delivers a truckload, how often does the driver have enough duty time to reach the 11th hour? When the driver drives over 10 hours, is it by 5 minutes or by 55 minutes? What is the percentage of driving that takes place in each hour compared to total driving that occurs?

The American Trucking Associations (ATA), in their comments to the docket (April 21, 2010), argued that reducing driving time or on-duty time would increase crashes because more inexperienced drivers would need to be hired to move freight. FMCSA recognizes that there is a risk associated with inexperienced drivers, but believes that this problem is not as serious as ATA suggests. The 2007 Commodity Flow Survey indicated that about 75 percent of freight is moved in trips of less than 100 miles; with loading and unloading time, it is unlikely that drivers making multiple short trips in a day are able to drive 10, let alone 11 hours. FMCSA's 2007 Field Study found that for longer haul operations (beyond 100 miles) 27 percent of the driving periods extended into the 11th hour.[33] Based on comments about long loading/unloading time that drivers made at the listening sessions, it appears that there will be many days when drivers cannot reach even 10 hours.

In an industry where TL motor carriers experience annual driver turnover above 100 percent, there is always a considerable influx of new drivers each year, as well as experienced drivers changing jobs. Better training and supervision of new drivers would seem a more reasonable response than pushing older drivers to work longer hours. In addition, when FMCSA analyzed this issue in the 2003 RIA, it found the effects of hiring new drivers were almost exactly counterbalanced by the reduced volume of long-haul trucking caused by shifting some traffic to rail.

Nonetheless, there is considerable uncertainty about the extent of the elevated crash risk associated with inexperience; and the possibility that new drivers operating under a 10-hour limit might be involved in more crashes than veteran drivers following an 11-hour rule cannot be ignored. According to BLS figures, employment in the trucking industry has declined by between 9 and 13 percent since 2008—or by 120,000 to 180,000 drivers. A 10-hour limit that required carriers to hire additional personnel might result in the return of experienced drivers largely immune to "rookie" driving mistakes. In any case, while FMCSA currently favors the 10-hour limit, it requests further research and data from the commenters before making a decision.

B. Breaks

Under the existing rule, a driver may drive for up to 11 consecutive hours. Although a relatively small percentage of drivers drive without breaks, the complaints from drivers about their inability to take breaks under the 14-hour rule suggest that some may, in fact, work without any breaks. ATA, in their comments to the docket, stated that the full 14-hour day has been built into supply chain planning and that any reduction would affect productivity. This argument implies that some carriers expect their drivers to work the full 14 hours without a break. A NIOSH analysis of ATUS data on truck drivers found that truck drivers worked 1 hour per day more on weekdays and 3.4 hours per day more on weekends in 2006 compared to 2003.[34]

FMCSA believes that working continuously without a break is neither safe nor healthy. Research indicates that breaks during work can counteract fatigue and reduce the risk of crashes.[35] On the health side, Hamilton, M.T., *et al.* (2007) found that increased standing and moving had a greater effect on the body's ability to block molecular signals that cause metabolic diseases than adding vigorous exercise. They concluded that a non-exercising person may become even more metabolically unfit by sitting too much.[36]

FMCSA wants to give drivers flexibility in scheduling breaks, recognizing that they are not always able to find a place to stop at a particular point in their schedule. Under the proposed rule, drivers would be able to work and drive for up to 7 hours without a required break. Upon reaching the 7th hour since coming on duty, the driver would need to take a break of at least a half hour before resuming driving. The driver could remain on duty without a break after the 7th hour, but could not drive again without taking a break. A driver who took a half hour break at 6.5 or 7 hours after coming on duty would generally not need a second break. But a driver who took a half-hour break 4 hours after coming on duty would need a second break no later than 11.5 hours after coming on duty to drive after that time. This approach should give drivers considerable latitude in scheduling breaks. Many drivers take breaks already; the 2006 FMCSA Truck Driver Fatigue Management Survey indicated that more than 65 percent of the drivers took breaks of a half hour or more during the work day.[37] A break will

[33] FMCSA, "2007 Hours of Service Study," 2007. Available in the docket: FMCSA–2004–19608–2538.

[34] Chen, G.X., *et al.* (2009).

[35] Folkard, S. & Lombardi, D. A., "Modeling the Impact of the Components of Long Work Hours on Injuries and 'Accidents'," *American Journal of Industrial Medicine,* Vol. 49, No. 11, November 2006, pp. 953–963. FMCSA–2004–19608–4019.

O'Neill, T.R., Krueger, G.P., Van Hemel, S.B. & McGowan, A.L., "Effects of Operating Practices on Commercial Driver Alertness," 1999. FMCSA–2004–19608–0071.

[36] Hamilton, M. T., Hamilton, D. G. & Zderic, T. W., "Role of Low Energy Expenditure and Sitting in Obesity, Metabolic Syndrome, Type 2 Diabetes, and Cardiovascular Disease," *Diabetes,* Vol. 56, No. 11, November 1, 2007, pp. 2655–2667. FMCSA–2004–19608–3976.

[37] Dinges, D.F. & Maislin, G. (2006).

reduce time-on-task effects and negative health impacts of prolonged sitting.

C. Duty Time/Driving Window

FMCSA proposes to set a 14-consecutive-hour driving window during which a driver may be on-duty for 13 hours. At the end of the driving window, the driver would have to go off duty. This approach effectively reduces the maximum allowable work during a duty period by 1 hour from the existing rule and gives drivers an opportunity to take up to an hour off duty during the working day. An extra hour off duty per day should increase sleep and mitigate fatigue and health impacts for drivers working to the limits of the rule. Even if drivers do not sleep during the breaks, they can engage in other non-work activity (*e.g.,* eating and talking to friends and family) that might otherwise reduce sleep time during the 10-hour off-duty period. The 1-hour reduction in duty time, in combination with 10 hours of driving time, would maintain the amount of on-duty-not-driving time that the current rule allows for drivers who are using all of their driving time, *i.e.,* 3 hours. If the Agency adopts the 11-hour driving limit, drivers would have only 2 hours of on-duty-not-driving time. FMCSA field studies in 2005 and 2007 indicated that many drivers do not work the 14 hours allowed under the current rule; the reduction to 13 on-duty hours, therefore, should have a limited impact on most drivers.

As discussed above, drivers at the listening sessions and in comments on the previous rulemakings stated that the existing rule discourages them from taking breaks because breaks are included in the calculation of the 14-hour driving window. They asked FMCSA to return to the pre-2003 rule, which did not include off-duty time in the calculation of the 15-hour limit then in effect. FMCSA rejected that approach in 2003 because it enabled drivers to extend the duty day well beyond 15 hours, allowing them to drive 17 to 20 hours or more after starting work, when fatigue can be extreme.

Because FMCSA wants to encourage drivers to take rest breaks when needed and in response to requests for flexibility, the Agency is proposing to allow drivers of property-carrying CMVs to extend the driving window by 2 hours, to 16 consecutive hours, twice in the previous 168 consecutive hours. This is not a calendar week (*e.g.,* 12:01 a.m. Monday to 12 p.m. Sunday, *etc.*) but rather a moving period comprised of the past 168 hours, a period that changes every hour. A driver who used one 16-hour driving window starting at 6 a.m. on Tuesday and a second beginning at 8 a.m. on Thursday, could not start another 16-hour day until 6 a.m. on the following Tuesday. It should also be noted that taking a 34-hour (or longer) restart does not affect this 168-hour look-back period. In other words, the driver does not get two 16-hour days simply by completing a restart period. The proposed extension would not extend the 13-hour duty time; any driver who wanted to drive to the 16th hour after coming on duty would have to have taken 3 hours of off-duty time during the driving window. Any use of time beyond 14 hours after coming on duty would count as a use of the extension. For example, a driver who worked a 14.5 hour period would be considered to have used one extension. Finally, the driver would have to go off duty at the end of the 16th hour (instead of the end of the 14th hour on normal days).

FMCSA considered extending the driving window to 16 hours daily, but decided that such a change would invite the extended hours that occurred under the pre-2003 rules. Once drivers, carriers, brokers, and shippers knew drivers could work over a 16-hour period daily, they could build that period into their scheduling, as ATA indicates they have done with the 14-hour clock. That could mean drivers would be routinely driving in the 16th hour after the start of the driving window. It would also put the driver on a schedule that could move starting time forward 2 hours a day or 10 hours over a 5-day period. Although it is easier to obtain adequate sleep when moving a schedule forward rather than backward, this level of forward change could seriously disrupt sleep. Unlike drivers on regular schedules who would use the extension only if necessary to deal with unexpected problems (breakdowns, unanticipated congestion) because using it would disrupt their work schedule the next day, long-haul TL drivers are not on a regular schedule and would have no disincentive for using a daily 16-hour extension. FMCSA believes that limiting the 16-hour provision to twice a week and not allowing the extension to add duty time will encourage drivers to use it only when they need flexibility.

A number of drivers at the listening sessions wanted the option of extending the driving window so they could reach a safe location when they were held at a loading dock until they ran out of duty time but still had to move the truck. FMCSA does not believe that such a provision is advisable. It could take several hours to find a safe location in some parts of the country. These drivers were essentially asking for an unlimited extension of the work day as the result of frequently occurring incidents that should be foreseeable under most circumstances. In addition, it would be impossible to determine whether the driver needed time (however little) to reach a safe location or was simply working beyond the limits. Similarly, drivers argued that they want to be able to stop driving and "sit out" rush hours. Drivers could use the 16-hour window to avoid rush hour congestion twice a week, if they choose to use it that way, but not more frequently. FMCSA requests comments on whether 16 hours is an appropriate extension or whether 15 hours would be sufficient. FMCSA also requests comments on whether the extension should be limited to once a week, twice a week, or allowed more frequently, and whether drivers should be barred from using the extension on consecutive days.

Night drivers, particularly those using the sleeper berth at rest areas or truck stops, may find it difficult to obtain a reasonable amount of sleep in the daytime. Even people who are suffering from acute sleep deprivation (*e.g.,* no sleep for 24 hours) find it hard to sleep during the day under ideal conditions (dark, quiet spaces). FMCSA is soliciting information on patterns of work for night drivers: For drivers who always drive overnight, what is the typical length of their duty day? For drivers who sometimes drive overnight, how frequently do they do that? FMCSA is seeking comments on whether drivers who drive at least 3 hours between midnight and 6 a.m. should have an hour less duty time available (12 hours rather than 13) to provide a longer period to obtain sleep.

D. Restart and Weekly Limits

The pre-2003 rule prohibited driving after being on duty 60 hours in 7 days or 70 hours in 8 days. This meant that drivers working to the daily limits could run out of hours and would need to take up to 3 days off before they could start driving again. Particularly for long-haul drivers, this prolonged off-duty period away from home was seen as a serious problem. The 2003 final rule allowed drivers to reset their calculation of the 60- or 70-hour limits whenever they take at least 34 consecutive hours off duty. The 34-hour restart provision has been almost uniformly praised by drivers and carriers, except for those who would like a shorter restart. Safety advocacy groups, however, have opposed the restart because it allows a driver who is driving and working to the limits to be on duty up to 84 hours in 7 days and 98 hours in 8 days, a substantial increase over the 60-/70-hour limits of the pre-2003 rule. The

safety advocacy groups have also pointed out that, as a practical matter, the 34-hour restart provides only one night of sleep for night-time drivers.

FMCSA did not amend the restart provision in the 2005 and subsequent rulemakings because it provides substantial economic productivity benefits and because the Agency believed that drivers would not generally take the minimum of 34 hours or work extreme hours; the Agency assumed that drivers would use the restart mainly to simplify bookkeeping and to limit down-time while away from home. Drivers and carriers, however, stated at the listening sessions and in their comments that, especially on the road, drivers do indeed take the minimum restart allowed. Drivers who are on the road for several weeks at a time could, therefore, work very long hours even if they cannot actually reach the maximum allowed because of delays in pick-ups and deliveries. Some carriers with regular schedules stated that they have used the restart to add one work shift a week. If carriers have arranged their schedules so that drivers are on duty for the full 14-hour day, as ATA claimed in its 2010 comment to the docket, then the restart allows a driver to work more than 80 hours in 7 days compared with 60 hours in the pre-2003 rule.

FMCSA continues to believe that allowing drivers to spend less idle time on long runs is sensible, but must balance this against the fact that the restart provision may be exacerbating problems with long hours and resulting fatigue. As discussed above, long weekly hours are associated with sleep loss, fatigue, and serious health impacts. FMCSA is, therefore, proposing two limits to the 34-hour restart. First, any 34-hour or longer period used as a restart would have to include two periods between midnight and 6 a.m. (2 nights of sleep). Second, drivers would be allowed to take only one restart a week; that is, they would be able to begin a restart only 168 hours after the beginning of the previous restart. For example, if a driver ends a work week at Friday at 6 p.m. and begins the restart, the restart could end no earlier than Sunday at 6 a.m. The next restart could not begin earlier than the following Friday at 6 p.m. If the driver ran out of weekly hours at noon on that second Friday, for example, he or she could not count the off-duty hours between noon and 6 p.m. toward the 34 hours.

The 2-night provision would mainly impact night-time drivers because daytime schedules already allow drivers to obtain 2 nights of sleep within the 34-hour period. For night time drivers, the 2-night provision would extend the required restart provision. Under the NPRM, a driver with a regular night-time schedule would need to take virtually an extra day off duty to meet the requirement for two night-time sleep periods and stay on schedule. ATA argued in its 2010 comment to the docket that, if confronted with this requirement, these drivers would "flip" to a day-time schedule to maximize work time, which would add to congestion. FMCSA notes that many of the drivers who work a regular night-time schedule drive for LTL or local carriers and usually take the weekend off. They will not be affected by this change. ATA also argued that 2 nights off were not needed for night drivers because they could get two sleep periods in 34 hours off. Research on shift workers indicates that on their days off they switch to a regular night-time sleep schedule.[38]

Washington State University conducted a study for FMCSA to determine the effectiveness of the current 34-hour restart provision in restoring performance.[39] The first phase of the study evaluated the effectiveness of the 34-hour restart using a laboratory setting to compare best-case (day-time work) and worst-case (night-time work) scenarios. The study found that a 34-hour break was effective at mitigating sleep loss and consequent performance impairment for day-time workers who obtained 2 nights of sleep, but was not effective for night-time workers who obtained only 1 night of sleep in the break plus two long nap periods. Research indicates that daytime sleep is not as restorative as nighttime sleep.[40] Even when the time is available, the time actually spent sleeping is less during the day than at night.[41] Shift work and night work are associated with less sleep, even when night work is permanent,[42] presumably because of the disrupting effects of circadian cycles.[43] Sleep obtained is not only reduced in length, but also poorer in quality.[44] Although it is not feasible to eliminate nighttime driving, such driving cannot be treated the same as driving during daytime.

Washington State University recently completed a second phase of its study. It has not been published or peer reviewed yet but will be completed soon. Phase II examined a restart provision for night-time drivers that contains two sleep periods between midnight and 6 a.m., with a minimum of 34 hours off duty. In this study, the primary performance measure, the number of lapses on a 10-minute psychomotor vigilance test (PVT), was administered eight times per day in the working periods. The study data showed no significant difference in PVT lapses between the pre-restart and post-restart work periods overall, indicating that the 2-night recovery period was effective at maintaining driver performance.[45] The study included a 58-hour restart period instead of a 34-hour restart period. The Washington State University study has some shortcomings. It utilized a very small sample size of participants (12 drivers). Also, the study took place not on the road, but in a laboratory setting with participants who knew that their behavior was being observed. In addition, the participants were instructed to sleep and were all recruited as perfectly healthy drivers. Because the study included a 58-hour restart time, not a 34-hour restart, the improvements could have been attributable to the extra off-duty period these 12 drivers were getting. In reality, drivers are not always in perfect health, and they cannot be told to sleep at a particular time by FMCSA. Nonetheless, FMCSA believes that the two phases of this study plus the research cited above justify today's proposal to amend the 34-hour restart by expanding the required restart period and adding a requirement for two off-duty periods

[38] Kecklund, G. & Åkerstedt, T., "Effects of Timing of Shifts on Sleepiness and Sleep Duration," *Journal of Sleep Research,* Vol. 4, No. S2, December 1995, pp. 47–50. FMCSA–2004–19608–4008.

[39] Van Dongen, H.P.A. & Belenky, G., "Investigation into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance: Phase I," April 2010. FMCSA–2004–19608–4020.

[40] Lavie, P., "To Nap, Perchance to Sleep—Ultradian Aspects of Napping," in D. Dinges and R. Broughton (eds.), *Sleep and Alertness, Cronobiological, Behavioral and Medical Aspects of Napping,* New York: Raven Press, Ltd., 1989, pp. 99–120. FMCSA–2004–19608–4032.

[41] Kurumatani, N., Koda, S., Nakagiri, S., Hisashige, A., Sakai, K., Saito, Y., Aoyama, H., Dejima, M. & Moriyama, T., "The Effects of Frequently Rotating Shiftwork on Sleep and the Family Life of Hospital Nurses," *Ergonomics,* Vol. 37, No. 6, June 1994, pp. 995–1007. FMCSA–2004–19608–4065.

[42] Bonnet, M.H. & Arand, D.L., "We Are Chronically Sleep Deprived," *Sleep,* Vol. 18, No. 10, 1995, pp. 908–911. FMCSA–2004–19608–4033.

[43] Åkerstedt, T., "Work Hours, Sleepiness and the Underlying Mechanism," *Journal of Sleep Research,* Vol. 4, Supplement 2, December 1995, pp. 15–22. FMCSA–2004–19608–4064.

[44] Lavie, P., "Ultrashort Sleep-Waking Schedule. III. 'Gates' and 'Forbidden Zones' for Sleep," *Electroencephalography and Clinical Neurophysiology,* Vol. 63, No. 5, May 1986, pp. 414–425. FMCSA–2004–19608–4053.

[45] Van Dongen, H.P.A., Jackson, M. & Belenky, G., "Duration of Restart Period Needed to Recycle with Optimal Performance: Phase II," FMCSA, October 2010.

from midnight to 6 a.m. The 168-hour provision would have the effect of limiting drivers' weekly hours to an average of 70 in 7 days. This represents a substantial reduction from the current limits, but still allows drivers on the road to take restarts that are shorter than required under the pre-2003 rule. Most restarts for day-time drivers would range from 34 hours to 48 hours. Drivers on a regular night schedule would need about 58 hours to obtain 2 nights of sleep and stay on schedule.

Finally, under the proposed rule, drivers would have to designate a specific period as a restart. This provision is intended to help drivers who may have a long break in the middle of the week (*e.g.,* while waiting for the next load or because of illness), but who do not want to use that as a restart even if they are eligible to do so. Drivers may want to postpone use of the restart until a specific time so they can be sure of having the entire 60 or 70 hours available when resuming a full work schedule.

It should be noted that the restart provision is mainly important for drivers who are working long days and who, therefore, reach their 60- or 70-hour limit, which remains unchanged, in less than 7 or 8 days. Drivers who do not work long hours, or do so only on a limited number of days during the week, may never need to use the restart except as a way to simplify keeping track of their hours. For example, a driver could work 10 hours a day for 7 days, take the eighth day off, and continue to work without using the restart provision.

E. Sleeper Berth

Prior to 2005, FMCSA's rules allowed drivers to obtain the equivalent of 10 consecutive hours off by taking two periods in the sleeper berth, neither of which could be less than 2 hours long. Drivers, particularly team drivers, frequently divided their time into 5 hours of driving followed by 5 hours in the sleeper berth. In 2005, FMCSA eliminated the split sleeper berth provision and required at least 8 consecutive hours in the sleeper berth so that drivers would have the chance to obtain at least one long sleep period. Drivers using the 8-hour sleeper berth period must also take a second break of at least 2 hours, either in the sleeper berth or off duty. The shorter period is included in the calculation of the 14-hour duty period.

For years, drivers and carriers have expressed concerns about the 2005 revisions. Team drivers have complained that, because it is difficult to sleep in a moving truck, alternating shorter runs with their co-driver would allow them to stop before they become too tired. Other drivers argued that it is hard to stay in the sleeper berth for 8 consecutive hours. Drivers generally objected to the requirement to include the shorter period in the calculation of the 14-hour window, saying it discourages the use of the provision. Some drivers and carriers have also said that the complexity of the provision makes them reluctant to use it because they are uncertain how it should be logged.

FMCSA recognizes that drivers have concerns about the existing provision, but there is no clear evidence at this time that two short sleep periods can provide the equivalent of one longer period. Emerging research indicates that dividing sleep into two shorter periods results in equal alertness levels,[46] but this is not the only issue. The time of day in which the sleep periods are taken is critically important.

FMCSA is not proposing to change the sleeper berth exception, but the other changes to the rule would have an impact on sleeper berth users. The shorter off-duty or sleeper berth period would be included in the calculation of the driving window, as it is now. Because the driving window (14 hours) would be longer than allowed duty time (13 hours), use of the shorter period would not always reduce available duty time. On days when the driver is using the 16-hour extended window, the shorter period would not reduce duty time unless the period is more than 3 hours or unless the driver takes more than an hour of other breaks during the driving window. On days when the driver is using the 14-hour driving window, use of the sleeper exception would reduce the available duty hours by at least 1 hour.

F. Other Issues

On-duty definition. In September 2005, ATA petitioned FMCSA to change the definition of "on duty time" to allow team drivers to log as off duty up to 2 hours spent in the passenger seat. Under the existing definition, drivers are on duty if they are in the truck unless they are resting in the sleeper berth. Single drivers may spend the shorter break (at least 2 hours) either in the sleeper berth or off duty. Because one of the team members drives while the other takes his or her break, the result of the rule is that the non-working driver has to take both periods in the sleeper berth because it is not possible to log the shorter time as off duty while he or she is "in or on upon any commercial motor vehicle."

FMCSA agrees with ATA's recommendation and is proposing to revise the definition of "on duty" to allow a team driver to log as off duty up to 2 hours spent in the passenger seat either immediately before or after the 8-hour period in the sleeper berth. In addition, FMCSA is proposing to exclude from the definition of "on duty," time spent resting in or on a parked CMV. Drivers in the past have noted that the current definition makes it difficult for drivers of CMVs without sleeper berths (known as day cabs) to rest because they were considered to be on duty if they were in a parked truck. In many cases, the safest, most comfortable, and often the only place for such a driver to rest during a duty tour will be in the parked truck.

Penalties. FMCSA is proposing to add to the penalty schedule in Appendix B to 49 CFR part 386 a new paragraph that would define as potentially egregious violations of § 395.3(a) or § 395.5(a) any instance where the driver exceeds the driving-time limit (whether 10 or 11 hours) by 3 or more hours. The Agency would consider drivers or motor carriers who commit such violations to be eligible for the maximum civil penalties available.

In determining the amount of any civil penalty, Congress instructed FMCSA to consider a number of factors, including the nature, circumstances, extent, and gravity of the violation committed, as well as the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and other such matters as justice and public safety may require. Congress instructed FMCSA to calculate each penalty to induce further compliance (49 U.S.C. 521(b)(2)(D)). Congress, however, also entrusted FMCSA with the responsibility to ensure that motor carriers operate safely by imposing penalties designed to ensure prompt and sustained compliance with safety laws (Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), (49 U.S.C. 521 note)). Prompt and sustained compliance with driving-time limits is paramount to the Agency's safety mission; FMCSA believes that making egregious violations eligible for the maximum penalty will help to promote these goals. Although some of the statutory factors in 49 U.S.C. 521(b)(2)(D) may limit the Agency's ability to impose penalties, others—like the extent and gravity of the violation—

[46] Mollicone, D.J., Van Dongen, H.P., Rogers, N.L. & Dinges, D.F., "Response Surface Mapping of Neurobehavioral Performance: Testing the Feasibility of Split Sleep Schedules for Space Operations," *Acta Astronaut,* Vol. 63, No. 7–10, 2008, pp. 833–840. FMCSA–2004–19608–4017.

could favor enhanced penalties. Furthermore, section 521(b)(2)(D) allows FMCSA to take into account "such other matters as * * * public safety may require." The mandate to consider "public safety," combined with the injunction of section 222 to impose civil penalties "calculated to ensure *prompt* and sustained compliance," clearly authorizes FMCSA to balance mitigating factors against aggravating factors and to impose the maximum penalty for a first offense that has significant potential to cause serious injury or death, such as excessively long driving hours. FMCSA has no desire to impose such a penalty; on the contrary, the Agency's hope is that the deterrent effect will make such action unnecessary. But this is a penalty the Agency believes it should have at the ready to deal with truly extreme violations.

FMCSA is not proposing to make the imposition of maximum penalties automatic because it recognizes that a driver may be considered to have exceeded the limit to this degree in different circumstances. For example, one driver may have driven 14 hours between 8 a.m. and 10 p.m.; a second driver may have driven 10 hours, taken a 9-hour off-duty period, then driven another 4 hours. Both of these drivers have technically driven more than the proposed rule would allow (either 3 hours more than an 11-hour driving-time limit or 4 hours more than a 10-hour limit), but only the first might be considered an egregious violation. FMCSA requests comments on whether 3 hours is the appropriate period to trigger the consideration of egregious violation penalties. FMCSA is also seeking comment on whether it should apply a similar concept to other provisions (duty time, driving window, weekly limits, restart) and if so, what those periods should be.

Section 395.1(o). FMCSA proposes removing paragraph (o), which allows property-carrying CMV drivers who return to their work-reporting locations daily to extend the duty day to 16 hours once a week. FMCSA believes that anyone driving a CMV large enough to require a commercial driver's license (CDL) (the drivers affected by paragraph (o)) at the 16th hour should not be doing so without taking at least 3 hours off duty during that shift. FMCSA thinks the proposed rule, which would allow drivers to extend the driving window to 16 hours without extending duty time twice a week, is preferable for reasons of safety. Furthermore, retaining § 395.1(o) while introducing two 16-hour driving windows with 13-hour on-duty periods would add considerable confusion to the rule with no corresponding advantage and indeed a possible detriment to safety.

Section 395.1(e)(2). Today's proposal for a 13-hour work limit within a general 14-hour driving window, and an optional 16-hour window twice a week, is similar in some respects to the current provision for short-haul operations with vehicles that do not require a CDL (§ 395.1(e)(2)). The rule for drivers of non-CDL vehicles includes certain exceptions and restrictions (an exemption from the logging requirement coupled with a 150 air-mile operating radius and an obligation to return to the work reporting location every day); however, like the proposed rule for larger vehicles, § 395.1(e)(2) allows a 14-hour driving window 5 days a week and a 16-hour window 2 days a week. In order to simplify the HOS regulations, FMCSA is considering rescinding paragraph (e)(2) and requiring the drivers who now use it to comply with the standard HOS limits. Although we have not formally included such a proposal in this NPRM, the Agency seeks comments on the effect of eliminating paragraph (e)(2). Our preliminary analysis suggests that removing paragraph (e)(2) would offer drivers advantages (*e.g.,* greater geographical range and freedom from the need to return to their point of departure every day) that might compensate for the more restrictive 13-hour work limit and the loss of the logbook exemption. FMCSA has little hard information about operations currently conducted under paragraph (e)(2); we invite drivers and carriers that utilize this provision to explain how a decision to remove it would affect them.

Paragraph (e)(1) of § 395.1, like paragraph (e)(2), also exempts drivers from keeping logs, but limits them to a 100 air-mile operating radius and requires them to return to their work reporting location and go off duty within 12 hours of coming on duty; unlike paragraph (e)(2), it is available to drivers of all vehicles, even those large enough to require a CDL. To what extent could carriers and drivers use this provision to compensate for a possible elimination of § 395.1(e)(2)?

In conjunction with a potential rescission of § 395.1(e)(2), the Agency is also considering an expansion of the 100 air-mile radius in § 395.1(e)(1) to 150 miles while leaving the rest of that paragraph unchanged. Please comment on the combined effects on carrier operations of those two possible amendments.

Compliance dates. When FMCSA adopted the 2003 HOS rule, it set a compliance date about 8 months after the date of publication. Before that time, drivers had to operate under the old rules. For enforcement reasons, it is necessary to set a specific date for compliance. FMCSA requests comments on the appropriate period between the effective date and compliance date of the rule. It should be long enough to allow training of drivers and inspectors and reprogramming of electronic log software.

Twenty-four hour clock. Safety advocacy groups have asked FMCSA to re-impose the "24-hour clock" that existed under the pre-1962 rules. They argue that working on a 24-hour schedule would allow drivers to establish a regular sleep pattern, which would increase the chances that the drivers could obtain more sleep. In practice, a substantial part of the industry already meets the requirement for a regular schedule. The long-haul TL sector, however, does not. In theory, under the existing rule a long-haul TL driver could drive 11 hours, take 10 hours off duty, then start driving again, moving his or her starting time back 3 hours a day.

FMCSA considered whether it was possible to limit drivers to a 24-hour schedule but was not able to develop a provision that was not operationally disruptive. Although superficially simple—the start time on the first day of a weekly cycle sets the start time for all other days—a 24-hour schedule is too rigid in practice and fails to accommodate the events over which the driver or carrier has no control. A few cities limit the hours when trucks are allowed to load and unload; shippers control loading and unloading time based on their needs, not drivers' schedules. At the beginning of a work week, drivers may not know where and when their subsequent loads will be. Adding another set of restrictions to their schedules is unnecessarily complex. It could also discourage drivers from taking shorter work days so they will be able to make a delivery appointment early the next day. The alternatives, such as limiting start times within a single trip, which would address the most likely period during which a driver might rotate the clock backward, would be difficult to enforce.

Although FMCSA is concerned about the effect of schedules that rotate backward or forward by several hours over days or the work week, the Agency has no information on the extent to which this is actually occurring. Under the current rule, a driver could theoretically drive 11 hours, then take 10 hours off before driving another 11 hours, but this cannot occur on very many consecutive days. On the first day of any trip, the driver has to spend on-

duty time while the truck is being loaded and on the last day, the driver has to wait while it is unloaded. As discussed in the description of the industry above, according to the 2007 Commodity Flow Survey, only 12 percent of the tons moved in for-hire trucks and less than 1 percent in private carrier trucks traveled more than 500 miles, which represents a 1-day trip. This average is consistent with a trend in the industry to shift to intermodal transport for long hauls, using rail for the long distance segments and trucks for regional operations. Drivers on 1-day trips may not be able to rotate their schedules backward substantially.

One-size-fits-all approach. MCSAC and some commenters at the listening sessions recommended that FMCSA consider developing different rules for different sectors of the industry. The Agency recognizes that different parts of the industry have different operational patterns and demands. Drivers and carriers, however, frequently conduct different types of operations in a single week. In 2000, FMCSA proposed to segregate the industry into five broad kinds of operation and to promulgate different rules for each. Most commenters thought the result was far too complex while others complained about the absence of a special provision for their particular operational niche. There was no consensus except that the proposal was unworkable. FMCSA continues to believe that creating separate requirements for the various sectors would make the rule extremely difficult to understand, implement, and enforce.

FMCSA notes that there are special provisions (some regulatory, some statutory) for farmers, driver salesmen, drivers in the construction industry, utility service vehicles, motor coaches, oilfield operations, adverse driving conditions, Alaska, and Hawaii. The HOS rules do not apply when truckers are providing emergency relief in the wake of a State or Federal declaration of an emergency. Furthermore, drivers and carriers have significant flexibility in complying with the rules. Neither FMCSA nor its predecessor agencies have ever had a genuine "one-size-fits-all" approach, but a safety age ncy cannot have separate standards for each and every element of the staggeringly diverse motor carrier industry.

VII. Section-by-Section Analysis

In part 385, Appendices B (explanation of the safety rating process) and C (regulations pertaining to remedial directives in Part 385, subpart J) would be revised to update references to part 395 and to remove references to § 395.1(o), which would be deleted. Revised references would be added for paragraphs in § 395.3. References to § 395.3(c)(1) and (2) would be deleted because a violation of the minimum restart period would constitute, and be cited as, a violation of the 60- or 70-hour rule. Providing separate violations for elements of the proposed rule would allow FMCSA to determine what parts of the rule had been violated. Under the current method of citing violations, a driver who drives for 18 hours straight cannot be distinguished from the driver who drives 11 hours, takes a 9.5 hour break, then drives another 7 hours. Both are cited for violating the 11-hour rule.

In part 386, Appendix B, paragraph (a) (penalty schedules; violations and maximum civil penalties) would be revised to add a new paragraph (6) to state that any violation of the driving-time limit that was 3 or more hours above the 10- or 11-hour limit could be considered an egregious violation that could trigger imposition of the maximum penalty.

Section 390.23(c)(2) (relief from regulations) would be revised to make the 34-hour restart provision consistent with the revised requirements in part 395.

In § 395.1, paragraph (b) (adverse driving conditions), would be revised to update (1)(i) to change 13 hours to 12 hours if a 10-hour driving-limit is adopted (2 hours more than the driving limit). If an 11-hour driving-time limit is adopted, no change would be needed. Paragraph (b)(1)(ii) would be revised to reference both the 14-hour and the 16-hour driving window.

In § 395.1, paragraph (d)(2) (oilfield operations) would be revised to clarify the language on waiting time and to state that waiting time would not be included in the calculation of the driving window.

In § 395.1, paragraph (e) (short-haul operations), paragraphs (1)(iv)(A) and (2)(v) would be revised to change the driving hours allowed to 10 hours; if an 11-hour driving-time limit is adopted, no change would be needed. The introduction to paragraph (e)(2) would be revised to eliminate the reference to paragraph (o). Paragraph (e)(2)(viii) would be revised to include the provision that the restart must include two night-time periods and is subject to the 168-hour limit.

Section 395.1(g) (sleeper berths) would be revised to change the driving time (if a 10-hour limit is adopted); it would be revised to change the duty-time and driving-window numbers and to add the provision (to paragraph (g)(1)(ii)(C)) that a team driver may log as off duty up to 2 hours in the passenger seat of a moving vehicle immediately before or after an 8- to 10-hour period in the sleeper berth.

Section 395.1(o) and (q) would be removed. Paragraph (q), a statutory exemption for certain transporters of grapes, expired on September 30, 2009. *See* Sec. 4146 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1749, August 10, 2005.

In § 395.2, the definition of "on-duty time" would be revised to allow a team driver to log as off duty up to 2 hours spent in the passenger seat either immediately before or after the 8-hour period in the sleeper berth. In addition, FMCSA is proposing to exclude from the definition of "on duty," time spent resting in or on a parked CMV. In the past, drivers have noted that the current definition makes it difficult for drivers of truck tractors without sleeper berths (known as day cabs) to rest because they were considered to be on duty if they were in a parked truck. In many cases, the safest, most comfortable, and often the only place for such a driver to rest during a duty tour will be in the parked truck.

Section 395.3 would be revised to place the individual requirements in separate paragraphs so that FMCSA would be able to cite drivers for violations of specific elements. Under the current rule, drivers are cited only for violations of driving time, on-duty time, and the weekly limits. The proposed rule would make it possible to cite drivers for violations of the daily off-duty break, the use of the 16-hour extension, the 34-hour restart, the 2-night provision, and the 168-hour provision as well as driving time, weekly hours, and on-duty time. This approach would provide useful information about the types of violations being committed.

VIII. Required Analyses

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), FMCSA must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget review and the requirements of the E.O. The E.O. defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or Tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

Under the E.O., agencies must estimate the costs and benefits of potential rules; for rules that may be considered economically significant ($100 million or more in costs and benefits), agencies must also evaluate options.

For this analysis, FMCSA considered and assessed the consequences of four potential regulatory options. (A copy of the complete RIA is available in the docket.) Option 1 is the no-action alternative, which would leave the existing 2008 rule in place. Options 2, 3, and 4 each would adopt several revisions to the rule. The RIA addresses each option separately. Option 2 proposes a 10-hour driving-time limit; it would also require the driver to take a rest break during the day; impose a daily duty limit; and reduce the weekly maximum driving and on-duty time theoretically achievable. Option 2 would give drivers the flexibility to work intensely for a single week, after taking two full days off; for example, daytime drivers could work up to 13 hours per day for 5 days in a row (a cumulative 65 hours), take 34 hours off to restart the 70-hour clock, and then work another 13-hour day, for a total of 6 13-hour days, which is a cumulative 78 hours on-duty (out of 7 consecutive calendar days). Options 3 and 4 are identical to Option 2 in all respects except for the amount of driving time allowed. Option 3 would allow an 11-hour driving-time limit, while Option 4 would adopt a 9-hour driving-time limit. Although Option 2 is the Agency's currently preferred option, this summary presents the impacts of Options 2 through 4.

Compliance with HOS rules was assumed to be 100 percent for both the baseline and options; no attempt was made to estimate real-world compliance rates or to adjust costs and benefits for non-compliance. This assumption was made to avoid understating the true costs of the rule. To the extent that compliance rates fall short of 100 percent, both costs and benefits would be lower. This approach allows for analyses of supplementary rules aimed at improving compliance, which would presumably move both costs and benefits closer to the levels estimated in this analysis. These incremental changes in costs and benefits would not duplicate the costs and benefits estimated for this proposal; rather they would indicate the extent to which the supplementary rules ensured that the proposal's costs and benefits were realized.

To calculate the impacts of the proposed changes to the HOS rule, it is necessary to develop a profile of the motor carrier industry and estimate the degree to which drivers in various segments work up to or close to the limits of the current rule. Drivers whose preferences or work demands would lead them to choose schedules well within the current limits for reasons unrelated to those limits will not be affected by the rule changes.

The analysis concentrated on inter-city long-haul or regional, as opposed to local, trucking operations. In general, short-haul trucking work has far more in common with other occupations than it does with regional or long-haul trucking. These local, short-haul trucking operations are generally 5-day-a-week jobs, and much of the time on duty is given to tasks other than driving. Typical work days are 8 to 10 hours or so and typical weeks are 40 to 55 hours. Many, if not most, of these drivers receive overtime pay past 8 hours in a day. Most of the work is regular in character; drivers go to basically the same places and do the same things every day. The rule changes proposed in this NPRM are expected to have little effect on such operations.

Both for simplicity of presentation and because of the nature of the available data, the analysis used 100 miles as the point of demarcation between local and over-the-road (OTR) service. Much of the information on working and driving hours is drawn from FMCSA's 2007 Field Survey.[47] Companies and drivers were identified as operating within or beyond a 100-mile radius. The Economic Census,[48] which provided data on revenue, defines a long-distance firm as one carrying goods between metropolitan areas; this is roughly compatible with a 100-mile radius for the distinction between local and OTR service. One hundred miles is also compatible with the length-of-haul classes in the Commodity Flow Survey.

To analyze the impact of the proposed rule changes, the analysis needed to define the prevailing operating patterns in the industry. Of particular interest is the extent to which drivers work close to the limits set by the current rule. To analyze current patterns in work intensity, drivers were assigned to four intensity groups, based on their average weekly hours of work. For this purpose, the analysis used data on weekly work hours from the 2007 Field Survey to define intensity groups as shown in Table 4.

Moderate-intensity drivers are on duty an average of 45 hours per week. High-intensity drivers are on duty an average of 60 hours per week. The third group, very-high-intensity drivers, works an average of 70 hours per week. The fourth group, extreme-intensity drivers, is on duty an average of 80 hours per week. The 2007 Field Survey indicated a distribution of the driver population across these groups as shown below.

TABLE 4—DRIVER GROUPS BY INTENSITY OF SCHEDULE

Work intensity group	Average weekly work time	Percent of workforce	Weighted average hours per week
Moderate	45	66%	29.70
High	60	19%	11.40
Very High	70	10%	7.00
Extreme	80	5%	4.00
Total	.....	.....	52.10

[47] The "2007 Field Survey" is an alternate title for the FMCSA, "2007 Hours of Service Study," 2007. FMCSA–2004–19608–2538.

[48] U.S. Census Bureau, "2007 NAICS [North American Industry Classification System] Definitions 484 Truck Transportation," 2008. FMCSA–2004–19608–4066.

The weighted average is obtained by multiplying the average work time in each class by the fraction of the workforce in that class. The sum, just over 52 hours, is average hours of work per week based on each group's share of the total population. Data analyzed in 2005 from the 2004 Field Survey and a large truck-load carrier suggested a slightly higher industry-wide average work week of 53 hours, which is the value used in the cost-benefit analysis.[49] The analysis made similar calculations using the Field Survey data to determine the weighted averages for use of the 10th and 11th hour of drive time and the 14th hour of daily on-duty time. These figures can be found in the accompanying RIA.

The basic approach for calculating impact on the industry is to follow the chain of consequences from changes in HOS provisions to the way they would affect existing work patterns in terms of work and driving hours per week, taking into account overlapping impacts of the rules. The resulting predicted changes in work and driving hours are then translated into changes in productivity by comparing them to average hours. The changes in productivity, in turn, are translated into changes in costs measured in dollars. The total combined effect would be to decrease industry productivity by approximately 2 percent for Option 2, 1 percent for Option 3 and 6 percent for Option 4. These decreases in industry productivity result in total annual cost of $990 million for Option 2, $480 million for Option 3 and $2,270 million for Option 4. In addition, the cost of re-training drivers, carriers, and enforcement personnel, as well as re-programming electronic logbook and other carrier driver-management software would result in approximately $320 million in costs in the first year for Options 2 through 4. The training and re-programming costs have been annualized because they would not recur; over the first 10 years at a 7 percent discount rate, they would amount to about $40 million per year. The total annualized costs of the changes in operating, training, and re-programming would therefore be approximately $1.030 billion for Option 2, $520 million for Option 3, and $2.310 billion for Option 4.

Rule Benefits

The primary goal of the proposed changes is to improve highway safety by reducing driver fatigue and the associated increase in the probability that fatigued drivers will be involved in crashes. A secondary benefit expected from this rule is a decrease in driver mortality due to health problems caused by long working hours and the association of long working hours with inadequate sleep.

To analyze the safety impacts of these changes, the Agency has developed a series of functions that incorporate fatigue-coded to hours of daily driving and hours of weekly work. In past HOS regulatory analyses, the effects on fatigue and fatigue-related crashes of changing the HOS rules were calculated using fatigue models. These models (the Walter Reed Sleep Performance Model for the 2003 rules, and the closely related SAFTE/FAST Model for later analyses) took into account the drivers' recent sleeping and waking histories, and calculated fatigue based on circadian effects as well as acute and cumulative sleep deprivation. These models did not incorporate functions that independently accounted for hours of driving after an extended rest (*i.e.,* acute time-on-task) or cumulative hours of work (as opposed to off-duty time) over recent days. These effects were assumed, instead, to be accounted for in the effects of long daily and weekly work hours on the drivers' ability to sleep. For the 2005 and later analyses, a separate time-on-task function based on statistical analysis of TIFA data was added to ensure that available evidence for time-on-task effects was not ignored; those analyses were still criticized as deficient for excluding consideration of cumulative time-on-task effects.

For the current analyses, FMCSA is replacing the use of the sleep-related fatigue models with a simpler approach that explicitly relates the risk of a fatigue-coded crash to hours of daily driving and hours of weekly work. The function used to model the effects of daily driving hours is the same as the TIFA-based logistic function used since 2005, while the function for modeling weekly work hours is taken from FMCSA's analysis of the LTCCS. Other fatigue effects, including the effects of insufficient sleep and circadian effects of working and sleeping at sub-optimal times, are implicitly assumed to be incorporated in the daily driving and weekly work hour functions because those effects were at work on the drivers involved in the crashes recorded in TIFA and LTCCS. To add fatigue effects calculated by a sleep/performance model on top of the empirically based functions would, therefore, run the risk of double counting the benefits of restrictions on work and driving. These functions, and the uncertainty surrounding them, are described in detail in the RIA.

The basic approach for using the empirically based fatigue risk functions was to count the changes in hours worked and driven as a result of the regulatory options. Each hour of driving that is avoided results in a reduction in expected fatigue-related crashes. These reductions were calculated using the predicted levels of fatigue-related crashes indicated by the fatigue functions. The hours of driving and working that are prevented by the options, though, were assumed to be shifted to other drivers or to other work days rather than being eliminated altogether. The fatigue crash risks for those other drivers and other days were also calculated. Taking account of these partially offsetting risks means that the predicted crash reductions attributable to the options were really the net effect of reducing risks at the extremes of driving and working while increasing risks for other drivers and on other days.

The changes in crash risks were monetized (*i.e.,* translated into dollars) using a comprehensive and detailed measure of the average damages from large truck crashes. This measure takes into account the losses of life (based on the DOT's accepted value of a "statistical life," recently set at $6 million); medical costs for injuries of various levels of severity, pain, and suffering; lost time due to the congestion effects of crashes; and property damage caused by the crashes themselves.[50]

Based on these functions, we have estimated that the safety benefits of this rule would be substantial. The mid-point estimate of the annual crash reduction benefits associated with these changes is based on the assumption that fatigue is involved in roughly 13 percent of large truck crashes, based on the LTCCS; this yielded a monetized safety benefit of approximately $720 million per year for Option 2, $430 million for Option 3, and $1.220 billion for Option 4. The analysis included a series of sensitivity analyses surrounding these estimates because the level of fatigue involvement in truck crashes is uncertain. For each of the options, the sensitivity analysis produced a range of benefits per year under the assumption that fatigue is involved in approximately 7 percent of crashes and under the assumption of a higher 18

[49] These data are shown in Exhibit 2–6 in the 2008 RIA [docket item number FMCSA–2004–19608–3510.1]. Details are in the 2010 RIA, Appendix A, "Data and Calculations for Industry Profile."

[50] Average large truck crash costs were obtained from the report, "Unit Costs of Medium/Heavy Truck Crashes," March 13, 2007, by E. Zaloshnja and T. Miller. The cost of a crash was updated to 2008 dollars and to reflect a value of a statistical life of $6 million. The report is in docket #FMCSA–2004–19608–3995.

percent fatigue involvement. The estimated safety benefits ranged from $390 million to $1.000 billion for Option 2, from $230 million to $590 million for Option 3, and from $660 million to $1.690 billion for Option 4.

The analysis also calculated benefits associated with improvements in driver health. The Agency has a statutory mandate to ensure that driving conditions do not impair driver health. Research indicates that reducing total daily and weekly work for the drivers working high-intensity schedules should result in these drivers getting more sleep on a daily and weekly basis. Recent research on sleep indicates that inadequate sleep is associated with increases in mortality. This effect appears to involve several complex pathways, including an increase in the propensity for workplace (and leisure time) accidents and mortality due to decrements in several health-related measures, such as an increase in the incidence of high blood pressure, obesity, diabetes, cardiovascular disease (CVD), and other health problems. The analysis attempted to model the workplace accident effect explicitly in the crash reduction benefits. However, explicit modeling of all the other various ways that insufficient sleep increases mortality becomes too complex and uncertain for this analysis. The studies the analysis relied on to model health benefits, therefore, are population-based studies that look at overall mortality, independent of the cause of death, as a function of sleep. Because increases in hours worked are associated with decreases in hours spent sleeping, and truck drivers working high-intensity schedules get significantly less than the 7 or more hours of sleep required for optimal mortality, cutting back on extreme work should, to some extent, reduce mortality among these drivers.

These benefit estimates depend on how much sleep CMV drivers currently get and how much more sleep they are expected to get under the proposed rule. The analysis developed a function that relates hours worked to hours slept and used this function to predict how much more sleep drivers would get under the proposed rule than they currently obtain under the existing rule. The results of this analysis are sensitive to the amount of sleep drivers are currently getting; increases in sleep have less substantial health benefits if individuals are already getting close to the optimal 7–8 hours per night than if they average less sleep. Since there is a degree of uncertainty surrounding how much sleep drivers currently get, a sensitivity analysis varied the baseline amount of sleep drivers are currently obtaining. This analysis showed that health improvement benefits are greatest when drivers are getting the least sleep under the current rule, because they have the most room for improvement.

The sensitivity analysis scenarios are divided into the low sleep, medium sleep, and high sleep categories. Under the low sleep scenario, the benefits are greatest because it is the most pessimistic regarding how much sleep drivers currently obtain. The high sleep scenario assumed that drivers are getting close to the optimal amount; as a result, there is little if any benefit to giving them opportunity for more sleep. For the low sleep scenario, driver health improvement benefits are estimated to be $1.480 billion per year for Option 2, $1.190 billion for Option 3, and $1.990 billion for Option 4. Under the medium sleep scenario, these benefits fall to $690 million per year for Option 2, $650 million for Option 3, and $660 million for Option 4. For the assumption of a high level of baseline sleep for Options 2 and 4, it is interesting to note that the benefits are negative, indicating that it is not beneficial for individuals to get additional sleep if they are already getting adequate sleep. As discussed in the RIA, we do not believe that the negative benefits for drivers with a high baseline level of sleep would be realized, but we include them to keep the analysis consistent with our other scenarios.

Tables 5 through 7 below present the total annual benefits of Options 2 through 4 for all three fatigue involvement and sleep scenarios described above. As this analysis indicates, Option 2 could generate anywhere from $280 million to $2.480 billion in annual benefits; Option 3 could generate between $330 million and $1.790 billion in annual benefits; and Option 4 could generate between negative $10 million and $3.680 billion in annual benefits, These estimates include both health and safety benefits. The mid-point estimate for Options 2 and 3 would result in a cost beneficial rule. For Option 2, the mid-point estimate is $1.410 billion in benefits, with associated costs of $1.030 billion; and for Option 3, the mid-point estimate is $1.080 billion in benefits, with associated costs of $520 million. For Option 4, the mid-point estimate is not cost beneficial, with benefits of $1.880 billion and associated costs of $2.310 billion.

TABLE 5—ESTIMATED BENEFITS BY AMOUNT OF SLEEP AND CRASH RATE FOR OPTION 2 (10 HOURS DRIVING)

[Millions per year]

Assumed percent of crashes due to fatigue	Assumed amount of nightly sleep		
	Low sleep	Medium sleep	High sleep
7 percent	$1,870	$1,080	$280
13 percent	2,210	1,410	620
18 percent	2,480	1,690	890

TABLE 6—ESTIMATED BENEFITS BY AMOUNT OF SLEEP AND CRASH RATE FOR OPTION 3 (11 HOURS DRIVING)

[Millions per year]

Assumed percent of crashes due to fatigue	Assumed amount of nightly sleep		
	Low sleep	Medium sleep	High sleep
7 percent	$1,420	$880	$330
13 percent	1,620	1,080	530
18 percent	1,790	1,240	700

TABLE 7—ESTIMATED BENEFITS BY AMOUNT OF SLEEP AND CRASH RATE FOR OPTION 4 (9 HOURS DRIVING)

[Millions per year]

Assumed percent of crashes due to fatigue	Assumed amount of nightly sleep		
	Low sleep	Medium sleep	High sleep
7 percent	$2,650	$1,320	−$10
13 percent	3,210	1,880	560
18 percent	3,680	2,350	1,030

Table 8 below presents the net benefits of Options 2 through 4 for all three baseline sleep scenarios. These figures use the 13 percent fatigue-involvement scenario described above. Option 3 has the highest net benefits for the medium and high sleep scenarios, while Option 2 has slightly higher net benefits in the low sleep scenario. The higher net benefits of Option 3 are due to the allowance of 11 hours of driving per day, which reduces productivity losses to the industry. Option 2 results in greater safety benefits than Option 3; and for high-benefit scenarios, the monetary value of those safety improvements outweighs their economic impact. Furthermore, this option appears likely to be cost beneficial under all but the most optimistic assumptions about how much sleep drivers get under the current rule. Under Option 4, the economic costs to industry are likely to outweigh the combined benefits of crash reductions and improvements in driver health. The high negative value for Option 4 for high baseline sleep is the result of the U-shaped relationship between average sleep per night and mortality rates mentioned above. Although the analysis shows a negative health benefit for drivers with medium and high baseline levels of sleep, FMCSA does not believe that these negative benefits would be realized because drivers might choose other activities rather than sleeping if they are getting enough sleep already. The negative benefits are included in the analysis to be consistent with assumptions regarding the other scenarios.

TABLE 8—NET BENEFITS BY OPTION

[Millions per year]

Net benefit scenario	Option 2 10 hours of driving allowed	Option 3 11 hours of driving allowed	Option 4 9 hours of driving allowed
Low Baseline Sleep	$1,170	$1,100	$900
Medium Baseline Sleep	380	560	−420
High Baseline Sleep	−410	10	−1,750

In addition to the quantified and monetized benefits discussed above, there may be other health benefits that shorter work days and weeks could produce. Research indicates that the metabolic and endocrine disruptions associated with short sleep time and long work hours are significantly related to obesity.[51] Obesity is in turn associated with higher incidences of diabetes, CVDs, hypertension, and obstructive sleep apnea.[52] These medical conditions impose costs on drivers who suffer from them and affect the quality of their lives. Sedentary work alone is also associated with obesity and mortality impacts.[53]

Research on the health and health costs found that CMV drivers are both heavier for their height and less healthy than adult males as a whole. As discussed in Section V. of this NPRM, drivers are far more likely than adult male workers as a whole to be obese. Table 9 presents the distribution of drivers by weight category and the incidence of health conditions for drivers in each weight group, taken from a study that used medical examination records and health insurance claims of 2,950 LTL drivers.[54] (The national statistics for the incidence of health conditions among adult males include men over 70, who may have higher incidences of some conditions than the younger working population.)

TABLE 9—DRIVER HEALTH CONDITIONS BY WEIGHT CATEGORY

N=2,950	Percent drivers in weight category	Presence of at least one health risk factor (percent)	Hypertension (percent)	Diabetes (percent)	High cholesterol (percent)
Normal weight	13	26	21	5	11
Overweight	30	39	31	10	17

[51] Van Cauter, E. & Knutson, K., "Sleep and the Epidemic of Obesity in Children and Adults," *European Journal of Endocrinology,* Vol. 159, 2008, pp. S59–66. FMCSA–2004–19608–3991.

Di Milia, L. & Mummery, K. (2009).

[52] Mokdad, A.H., Ford, E.S., Bowman, B.A., Dietz, W.H., Vinicor, F., Bales, V.S. & Marks, J.S., "Prevalence of Obesity, Diabetes, and Obesity-Related Health Risk Factors, 2001," *Journal of the American Medical Association,* Vol. 289, No. 1, 2003, pp. 76–79. FMCSA–2004–19608–4016.

[53] Katzmarzyk, P.T., Church, T.S., Craig, C.L. & Bouchard, C., "Sitting Time and Mortality from All Causes, Cardiovascular Disease, and Cancer," *Medicine and Science in Sports and Exercise,* Vol. 41, No. 5, May 2009, pp. 998–1005. FMCSA–2004–19608–4001.

[54] Martin, B.C., *et al.* (2009).

TABLE 9—DRIVER HEALTH CONDITIONS BY WEIGHT CATEGORY—Continued

N=2,950	Percent drivers in weight category	Presence of at least one health risk factor (percent)	Hypertension (percent)	Diabetes (percent)	High cholesterol (percent)
Obese	55	59	51	21	26
Overall		48	41	16	21
National adult male (CDC statistics)			31.80	10.9 (7.4% diagnosed)	15.60

FMCSA has not attempted to quantify the benefits of improved health that may accrue to drivers who have more time off. First, the Agency does not have dose-response curves that it can use to associate sleep time with mitigation or exacerbation of the various health impacts other than sleep loss itself. Second, the Agency has no basis for estimating the extent to which drivers who have an extra hour a day or extra hours per week off duty will use that time to exercise and sleep. Third, many of the health impacts are linked to obesity; given the difficulty most people have in losing weight, it would be unjustifiably optimistic to attempt to estimate the degree of potential weight loss.

The health consequences of long hours, inadequate sleep, and long stretches of sedentary work are, however, significant: They cause serious health conditions that may shorten a driver's life and increase healthcare costs. In addition, some studies have linked obesity to increased crash risks, including a recent analysis of the VTTI data, which found that obese CMV drivers were between 1.22 and 1.69 times as likely to drive while fatigued, 1.37 times more likely to be involved in a safety-critical event, and at 1.99 times greater risk of being above the fatigue threshold as measured by eye closure when driving.[55]

Conclusion

In conclusion, the RIA shows an annualized cost of about $1 billion for Option 2, about $500 million for Option 3, and over $2 billion for Option 4. Annual safety and health benefit estimates range from below $300 million to more than $2.4 billion in quantifiable benefits for Option 2, from $300 million to more than $1.7 billion for Option 3, and from negative $10 million to more than $3.6 billion for Option 4. Net quantifiable benefits, as a result, are likely to be positive, but could, under the 13 percent baseline fatigue involvement scenario, range from a negative $410 million per year to more than a positive $1.1 billion per year for Option 2, from a negative $10 million to a positive $1.1 billion for Option 3, and from more than a negative $1.8 billion to more than a positive $900 million for Option 4.

The wide range in estimated quantifiable benefits and net quantifiable benefits is a consequence of the difficulty of measuring fatigue and fatigue reductions, which are complex and often subjective concepts, in an industry with many different participants and diverse operational patterns. Uncertainty in the value of avoided deaths and greater expected lifespans create yet more uncertainty, the quantified benefits would be higher for higher values of "statistical lives." Still, it seems clear that the quantifiable benefits could easily be quite substantial, and could easily exceed the costs.

The costs, for their part, are large in absolute terms but minor when compared to the size of the industry: $1 billion per year (the total annualized cost for Option 2) is only half of 1 percent of revenues, $500 million per year (the total annualized cost for Option 3) is only one quarter of 1 percent of revenues, and $2 billion per year (the total annualized cost for Option 4) is only 1 percent of revenues in the for-hire long-haul segment of the industry. These total annual costs are an even smaller fraction of revenues of the long-haul segment as a whole. As an additional example, the costs of Option 2 are equivalent to less than a $0.02 per gallon increase in industry fuel costs, which is a minimal increase in an industry used to wide swings in fuel costs. Between 2006 and 2010, diesel fuel prices ranged from $2.09 a gallon to $4.70 a gallon.[56]

Compared to the other two options that were analyzed, Option 2 would have roughly twice the costs of Option 3 (which allows 11 hours of daily driving), and less than half the cost of Option 4 (which allows 9 hours). In keeping with their relative stringencies, Option 3 has lower and Option 4 has higher projected benefits than Option 2. Option 4's substantially larger costs do not appear to be justified by its generally higher range of benefits. While both Option 2 and Option 3 are generally cost-effective, Option 3's calculated net benefits appear likely to be somewhat higher than the net benefits of Option 2 under most assumptions about baseline conditions.

The Agency's goal of improving highway safety and protecting driver health, combined with the potentially significant but unquantifiable health benefits of reductions in maximum working and driving hours, make Option 2 a reasonable choice. Nonetheless, because of the costs of Option 2, the Agency requests additional data before making its final decision.

The Agency requests commenters to submit, to the extent possible, statistically reliable information on the costs and benefits of Options 2 and 3, especially with regard to a 10- and 11-hour driving limit, but also on other aspects of this NPRM of interest to the public. When submitting analyses of data, it is important to provide enough information on how the data were collected and enough actual data to allow FMCSA to determine if the conclusions drawn are justified by the underlying data.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal Agencies to determine whether proposed rules could have a significant economic impact on a substantial number of small entities. FMCSA conducted an Initial Regulatory Flexibility Analysis (IRFA) to analyze the impact of the proposed changes to the HOS regulations on small entities. After a description of why action is being taken by the Agency, this IRFA discusses the possible number of affected small entities. FMCSA estimates the impact of the new HOS rule provisions on small carriers in the first year in which the rule would be in

[55] Wiegand, D.M., Hanowski, R.J. & McDonald, S.E., "Commercial Drivers' Health: A Naturalistic Study of Body Mass Index, Fatigue, and Involvement in Safety-Critical Events," *Traffic Injury Prevention,* Vol. 10, No. 6, December 2009, pp. 573–579. FMCSA–2004–19608–3994.

[56] *http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp,* accessed May 11, 2010.

effect for Options 2 and 3. We then estimate the annual burden on small entities over the first 10 years of the rule being in effect. Lastly, we discuss the reporting, recordkeeping, and other compliance requirements of the proposed rule, discuss whether any other Federal regulations overlap with the proposed rule, and discuss the consideration of alternatives to minimize the impact of the proposed rule on small entities.

1. A Description of the Reasons Why Action by the Agency is Being Considered

The goals of the proposed changes to the HOS rule are to improve safety while ensuring that the requirements would not have an adverse impact on driver health. The proposed rule would also provide drivers with the flexibility to obtain rest when they need it and to adjust their schedules to account for unanticipated delays. The impact of HOS rules on CMV safety is difficult to separate from the many other factors that affect heavy-vehicle crashes. While the Agency believes that the data show no decline in highway safety since the implementation of the 2003 HOS rule and its re-adoption in the 2005 HOS rule, the 2007 IFR, and the 2008 HOS rule (73 FR 69567, 69572, Nov. 19, 2008), the total number of crashes, though declining, is still unacceptably high. Moreover, the source of the decline in crashes is unclear. FMCSA believes that, with the 10-hour option, the modified HOS rules proposed in this NPRM, coupled with FMCSA's many other safety initiatives and assisted by the actions of an increasingly safety-conscious motor carrier industry, would result in continued reductions in fatigue-related CMV crashes and fatalities. Furthermore, with the 10 hour option, the proposed rule is intended to protect drivers from the serious health problems associated with excessively long work hours, without significantly compromising their ability to do their jobs and earn a living.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objectives of the proposed rule are to reduce large-truck involved crashes—especially those where fatigue is a causative factor—and protect drivers against the adverse health impacts of working excessively long hours. This proposed rule is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984. *See* the Legal Basis section earlier in this document for a discussion of these two Acts. Before prescribing any regulations, FMCSA must also consider their "costs and benefits" (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are also discussed in this proposed rule.

3. A Description of and, Where Feasible, an Estimate of the Number of Affected Small Entities to Which the Proposed Rule Will Apply

The HOS regulations apply to both large and small motor carriers. The Small Business Administration defines a small entity in the truck transportation sub-sector (North American Industry Classification System [NAICS] 484) as an entity with annual revenue of less than $25.5 million [13 CFR 121.201]. Using data from the 2007 Economic Census, FMCSA estimated that the average carrier earns almost $200,000 in annual revenue per truck for firms with multiple power units,[57] suggesting that a typical carrier that qualifies as a small business would have fewer than 128 ($25.5 million/$200,000) power units (*i.e.,* trucks or tractors) in its fleet. Also using data from the 2007 Economic Census, FMCSA estimated that sole proprietorships earned approximately $85,000 in annual revenue.[58]

To determine the number of affected small entities, we used the analysis conducted by FMCSA for the Unified Carrier Registration (UCR) rule.[59] The economic analysis for the UCR rule divided carriers into brackets based on their fleet size (*i.e.,* number of power units), and estimated the number of carriers in each bracket. These brackets and their corresponding numbers of carriers are shown in Table 10. According to these estimates and the above-mentioned characterizations of small entities in the trucking industry, all of the carriers in Brackets 1 through 4 would qualify as small entities, as would many of the carriers in Bracket 5. Therefore, this analysis estimates that between 422,196 (Brackets 1 through 4) and 425,786 (Brackets 1 through 5) small entities would be affected by the HOS rule changes. This range may overstate the number of affected small entities because many private carriers with small fleets may not qualify as small businesses because their primary business is not the movement of freight. These private firms would thus have other sources of revenue and fall under different NAICS codes.

TABLE 10—NUMBER OF CARRIERS BY FLEET SIZE

[From FMCSA's Analysis of the Unified Carrier Registration Plan Rule]

Bracket	Fleet size	Number of carriers
1	1	194,425
2	2–5	145,266
3	6–20	65,155
4	21–100	17,350
5	101–1,000	3,590
6	1,001–More	292
Total		433,535

[57] As shown in the "2007 Economic Census," the entire trucking industry (NAICS code 484) generated revenue of $228,907 million (in 2006 dollars). FMCSA then used 2007 Economic Census data for NAICS code 484 to derive a total estimate of 1,183,000 trucks in the for-hire sector. FMCSA then divided total revenue by the total number of trucks to obtain an estimate of average revenue of $193,000 in 2006 dollars, or $199,967 inflated to 2008 dollars using the Gross Domestic Product (GDP) Deflator (*http://cost.jsc.nasa.gov/inflateGDP.html*). This $199,967 value was rounded to $200,000 in the analysis.

[58] There were 499,706 individual proprietorships in the "truck transportation" NAICS code with total revenue of $41,110 million. Dividing the total revenue by the total number of firms resulted in average revenue per firm of $82,269 in 2006 dollars, or $85,239 when inflated to 2008 dollars using the GDP Deflator (*http://cost.jsc.nasa.gov/inflateGDP.html*). This $85,239 value was rounded to $85,000 in the analysis.

[59] FMCSA, "Regulatory Evaluation of the Fees for the Unified Carrier Registration Plan," February 19, 2010. Available in the docket: FMCSA–2009–0231–0181.

Table 11 below presents figures for private carriers by NAICS code for industries with large numbers of drivers (and hence the likelihood of large numbers of fleets). The table includes the total number of CMV drivers working in each industry, the percentage of payroll those drivers account for, and the payroll of those industries as a percent of total industry revenue. Some of these industries have SBA size thresholds that are considerably lower than the threshold for truck transportation, strongly suggesting that many firms in these industries that would be considered small using the threshold of 128 power units are actually large. For example, a wholesaler with 128 trucks is certainly a large firm because it will have more than 100 employees. Other industries have thresholds as high as 1,500 full-time equivalent employees (FTEs); a firm in one of these industries might rank as small with even more than 128 power units if the number of power units in its fleet were large compared to the size of its workforce (*e.g.,* if it had 300 power units, and only three employees per power unit, it could be considered small in an industry with a threshold of 1,500 FTEs). From Table 11, however, this circumstance is not likely to be common: In firms in NAICS 21 and 31–33, which have high FTE thresholds, drivers make up only a very small percentage of the workforce. Thus, firms with a substantial numbers of power units are likely to have much larger labor forces, and are therefore likely to rank as large firms. Given these considerations, we are, if anything, over-counting the number of private carriers that would qualify as small businesses.

TABLE 11—PRIVATE CARRIERS AND DRIVERS BY INDUSTRY

NAICS	Industry	SBA standard	Number of drivers	Drivers as percent of all employees	Payroll as percent of revenues
21	Mining, Quarrying, and Oil and Gas Extraction.	500 FTE	29,900	4.17	10
23	Construction	$14 million to $33.5 million	127,200	1.76	19
31–33	Manufacturing	500–1,500 FTE	238,600	1.78	11
42	Wholesale	100 FTE	509,000	8.53	5.5
44–45	Retail	$7 million to $29 million	307,900	2.01	10
53	Real Estate and Leasing	$7 million to $25 million	40,500	1.9	18
56	Administrative and Support and Waste Management and Remediation Services.	$7 million to $35.3 million	132,300	1.64	46
722	Food Services	$7 million	175,400	1.82	29
81	Other Services	$7 million	44,000	0.80	24

First Year Impacts on Small Entities

Affected small entities would incur several types of costs as a result of the HOS rule provisions. First, as discussed in the HOS RIA, carriers would incur annual costs due to losses in productivity. As discussed in the HOS RIA, these productivity impacts are roughly $990 million per year for Option 2 and $480 million per year for Option 3. We divided this total productivity impact by the approximate number of long-haul drivers (1,600,000) to obtain an annual per driver productivity impact of approximately $620 for Option 2 and $400 for Option 3. We then converted these per driver impacts to per power unit impacts (shown below in Tables 12 and 13). For sole proprietorships, we assumed for this analysis that these were single power unit firms and there was one driver per tractor. The total annual operational cost for sole proprietorships was thus $620 ($620 × 1) for Option 2 and $300 ($300 × 1) for Option 3.[60] For firms with multiple power units, this analysis assumes that multiple unit carriers have 1.1 drivers per power unit.[61] The annual per power unit operational cost for firms with multiple power units was thus $682 ($620 × 1.1) for Option 2 and $330 ($300 × 1.1) for Option 3.

In addition to the productivity impacts, each carrier would incur one-time costs for training in the requirements of the new rule. To estimate the training cost, we used information from Agency personnel who participated in previous HOS retraining efforts to determine that each driver would need to take a one-time 2-hour training course to ensure compliance with the new rule provisions. As described in Chapter 6 of the RIA, we used a loaded average hourly rate of $23.96 (wages plus fringe benefits) for the industry. The 2-hour training course thus resulted in a cost of approximately $48 per driver.

Carriers would incur additional one-time costs for software reprogramming and other transition costs. As discussed in the RIA, reprogramming and other transition costs were estimated using information obtained from the HOS listening sessions conducted in various locations in early 2010. Based on information from these sessions, we assumed that the total one-time training, reprogramming, and other transition costs were about $200 per driver (including the $48 training cost discussed above). For sole proprietorships, we again assumed one driver per power unit for a total one-time cost of $200 per power unit. We view this estimate as conservative due to the fact that many firms will not incur any programming costs. We again assumed that carriers with multiple units have 1.1 drivers per power unit, for a total one-time cost of $220 per power unit.[62] These one-time costs for sole proprietorships and multiple power unit firms are the same for Options 2 and 3, and are shown below in Table 12.

To estimate the first-year costs per-power unit for affected firms, the annual and one-time costs for Option 2 and 3 were summed as shown in Tables 12 and 13. For Option 2, this calculation resulted in a total first-year cost to sole proprietorships of $820 per power-unit in the first year and a total first-year cost to firms with multiple power units of

[60] In this analysis, we consider sole proprietorships separately due to the fact that these firms tend to have low revenues and are thus impacted by the proposed rule differently than larger firms. We have assumed that sole proprietorships have one power unit, but their defining characteristic is their average revenues and not the number of power units they have.

[61] FMCSA, "SAFER Data: Average Drivers per Power Unit for TL Firms," *http://safer.fmcsa.dot.gov/.*

[62] FMCSA, "SAFER Data: Average Drivers per Power Unit for TL Firms," *http://safer.fmcsa.dot.gov/.*

$902 per power unit. For Option 3, this calculation resulted in a total first-year cost to sole proprietorships of $500 per power unit in the first year and a total first-year cost to firms with multiple power units of $550 per power unit.

TABLE 12—FIRST-YEAR COSTS TO AFFECTED FIRMS PER POWER UNIT FOR OPTION 2

Type of cost	Cost per power unit (sole proprietorship) [a]	Cost per power unit (multiple power unit firm) [a]
Annual Operating Cost (A)	$620	$682
One Time Training, Reprogramming, and Other Costs (B)	200	220
Total First Year Cost (A + B)	820	902

[a] FMCSA analysis.

TABLE 13—FIRST-YEAR COSTS TO AFFECTED FIRMS PER POWER UNIT FOR OPTION 34

Type of cost	Cost per power unit (sole proprietorship) [a]	Cost per power unit (multiple power unit firm) [a]
Annual Operating Cost (A)	$300	$330
One Time Training, Reprogramming, and Other Costs (B)	200	220
Total First Year Cost (A + B)	500	550

[a] FMCSA analysis.

Next, we compared the estimated first-year costs to the average revenue for sole proprietorships and multiple power unit firms for Options 2 and 3 (shown in Tables 14 and 15). As noted earlier, average revenues for different sized firms were taken from 2007 Economic Census data.[63] For Option 2, the first year costs of the proposed rule changes would be equal to 0.96 percent of average revenue for sole proprietorships and 0.45 percent of average revenue for multiple unit carriers. For Option 3, the first year costs of the proposed rule changes would be equal to 0.59 percent of average revenue for sole proprietorships and 0.28 percent of average revenue for multiple unit carriers. Thus, when looking only at first year costs for Options 2 and 3, the new HOS rule is not expected to have a significant impact on the average sole proprietorship or firm with multiple power units. Because of variability in both the first-year costs and the average revenues to which they are compared, however, the impact on firms would vary. It is thus likely that the impact of the first year costs would be higher for some carriers, rising to a level that could be considered significant.

TABLE 14—IMPACT OF FIRST-YEAR COSTS ON AFFECTED FIRMS FOR OPTION 2

Type of cost	Sole proprietorships	Multiple power unit firms
First Year Cost Per Power Unit (A) [a]	$820	$902
Annual Revenue Per Power Unit (B) [b]	$85,239	$199,967
First Year Cost Impact as a Percentage of Annual Revenue (A/B)	0.96%	0.45%

[a] FMCSA analysis.
[b] FMCSA analysis of 2007 Economic Census data.

TABLE 15—IMPACT OF FIRST-YEAR COSTS ON AFFECTED FIRMS FOR OPTION 3

Type of cost	Sole proprietorships	Multiple power unit firms
First Year Cost Per Power Unit (A) [a]	$500	$552
Annual Revenue Per Power Unit (B) [b]	$85,239	$199,967
First Year Cost Impact as a Percentage of Annual Revenue (A/B)	0.59%	0.28%

[a] FMCSA analysis.
[b] FMCSA analysis of 2007 Economic Census data.

Annual Burden on Affected Small Entities

To analyze the annual burden on affected small entities for Options 2 and 3, we amortized the one-time costs over a 10-year period, assuming a 7 percent discount rate. As shown in Table 16 for Option 2, the sum of the annual operating costs and the amortized one-time costs resulted in an annual burden of $647 per year over 10 years for sole proprietorships and an annual burden of $711 per year over 10 years for firms with multiple power units. As shown in Table 17 for Option 3, the sum of the

[63] To be conservative in assessing potential impacts, the revenues per power unit are based only upon for-hire firms (that is, those in Truck Transportation). Drivers make up only a small fraction of the labor force in other industries, which underlines the point that transportation is a small part of their operations. When the Agency has looked at the impact on private carriers in relation to their revenue in the past, the percentage impact of costs to private carriers as a share of revenue have been generally been an order of magnitude smaller than the impacts on for-hire trucking firms.

annual operating costs and the amortized one-time costs resulted in an annual burden of $327 per year over 10 years for sole proprietorships and an annual burden of $359 per year over 10 years for firms with multiple power units.

Next, we compared the annual burden to the average annual revenues of affected firms. As shown in Table 16, the annual costs of Option 2 are 0.76 percent of average annual revenue for sole proprietorships and 0.36 percent of average revenue for carriers with multiple power units. As shown in Table 17, the annual costs of Option 3 are 0.38 percent of average annual revenue for sole proprietorships and 0.18 percent of average revenue for carriers with multiple power units. These percentages fall below what the Agency views as a reasonable threshold for a significant impact. However, as mentioned above, the impact may vary across carriers. Therefore, the annual impact of the regulations on some affected carriers may be significant in relation to their revenue.

TABLE 16—ANNUAL IMPACT OF COSTS ON FIRMS OVER 10 YEARS FOR OPTION 2

Type of cost	Sole proprietorships	Multiple power unit firms
Annual Cost per Power Unit (One Time Costs Amortized Over 10 Years) (A) [a]	$647	$711
Annual Revenue per Power Unit (B) [b]	$85,239	$199,967
Annual Cost Impact as a Percentage of Annual Revenue (A/B)	0.76%	0.36%

[a] FMCSA analysis.
[b] FMCSA analysis of 2007 Economic Census data.

TABLE 17—ANNUAL IMPACT OF COSTS ON FIRMS OVER 10 YEARS FOR OPTION 3

Type of Cost	Sole proprietorships	Multiple power unit firms
Annual Cost per Power Unit (One Time Costs Amortized Over 10 Years) (A) [a]	$327	$359
Annual Revenue per Power Unit (B) [b]	$85,239	$199,967
Annual Cost Impact as a Percentage of Annual Revenue (A/B)	0.38%	0.18%

[a] FMCSA analysis.
[b] FMCSA analysis of 2007 Economic Census data.

4. Discussion of the Impact on Affected Small Entities

The analysis of the impact of the HOS rule on small entities shows that, while it is unlikely for the rule to have a significant impact on most small entities, FMCSA cannot certify that there would be no significant impacts. For a typical firm, the first year costs of Options 2 and 3 are below 1 percent of revenues, as are the average annual costs when society spreads the costs over 10 years.

However, projecting the distribution of impacts across carriers, few of which fit the definition of typical, is made more difficult by the variability in both costs and revenues. The new HOS rule provisions are designed to rein in the most extreme patterns of work while leaving more moderate operations largely unchanged. As a result, we project a substantial majority of the costs of the rule to fall on the sixth of the industry currently logging the most hours per week. Thus, most carriers are likely to be almost unaffected, while a minority would experience productivity impacts—and hence costs—well above the industry average.

Average revenues presumably range widely as well, meaning that the ratio of costs to revenues is difficult to characterize. Because greater work intensities are likely to generate greater revenues, though, the impacts and revenues per power unit are likely to be positively correlated: The carriers for which productivity is curtailed the most and which would incur the greatest costs would, therefore, be likely to have unusually large revenues per power unit as well.

These heavily affected carriers would still be likely to face costs that exceed the threshold used to define significant impacts. On the other hand, they could also have unusually high rates of profit in the baseline; because their drivers are currently putting in the most hours of work per week, they are able to spread their fixed costs over more hours. In other words, most of the impacts of the new HOS rule are likely to fall on the carriers with the greatest revenues and profit potential in the industry. These circumstances should reduce concern that large numbers of small carriers would experience significant impacts.

Another consideration in assessing the seriousness of the rule's impacts is that the industry is now gaining strength after an unusually deep recession. That recession depressed demand for transportation services. As the economy recovers, demand for the motor carrier industry is likely to recover as well, meaning that the new HOS rule's impacts could be experienced more as limitations on the potential growth in revenues than absolute reductions.

In recognition of the fact that the rule may significantly impact small entities, FMCSA explored options for decreasing the burden on small entities. FMCSA did not consider the option of exempting small entities from this rule because doing so would substantially decrease the safety benefits of the rule due to the large number of drivers working for small entities. The rule addresses fatigue of individual drivers, which is not affected by the size of the employer. Several provisions of the proposed rule, including the restart provision, the opportunity for 16-hour driving windows, and the break provisions, however, were designed to afford maximum flexibility for drivers who work close to the legal maximum limits, thus reducing the productivity impacts on carriers while still realizing the safety benefits of the new rule. FMCSA expects small carriers and owner-operators to be among the main beneficiaries of these provisions.

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The proposed rule does not change recordkeeping or reporting requirements. Drivers are required, by current rules, to keep records of duty status that document their daily and

weekly on-duty and driving time, and submit these records of duty status to their employing motor carrier on a bi-weekly basis. This rule would not change or add to this recordkeeping requirement for drivers or carriers. Drivers in all segments of the industry, including independent owner-operators, are well accustomed to complying with these recordkeeping and reporting requirements, and no professional skill over and above those skills that drivers already possess would be necessary for preparing these reports. All small entities within the industry would be subject to these rules. The type and classes of these small entities are described in the previous section of this analysis.

6. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposal

The Agency is unaware of any Federal rules which may duplicate, overlap, or conflict with the proposed rule.

7. A Description of Any Significant Alternatives to the Proposed Rule Which Minimize Any Significant Impact on Small Entities

The Agency did not identify any significant alternatives to the proposed rule that could lessen the burden on small entities without compromising its goals. This rule is targeted at preventing driver fatigue, and the Agency is unaware of any alternative to restricting driver work that the Agency has authority to implement that would address driver fatigue. This rule impacts motor carrier productivity proportionally to the number of drivers a motor carrier employs and the intensity of the schedules that motor carrier's drivers work. It is not obvious that productivity losses would be greater for small entities than for larger firms. To the extent that drivers working for a small entity work more intense schedules, that entity may experience greater productivity losses than a carrier whose drivers work less intensely on a daily and weekly basis. However, there appears to be no alternative available to the Agency that would limit driver fatigue while allowing more work. To improve public safety, all drivers, regardless of the size of the carrier they work for, must work within reasonable limits.

The recordkeeping and reporting burdens related to this rule would also affect entities proportional to the number of drivers they employ, and therefore does not disproportionately affect small motor carriers in any way. As noted above, drivers in all segments of the industry, working for entities of all sizes, are accustomed to compiling and submitting records of duty status on a regular basis. This rule would therefore not place an undue recordkeeping or reporting burden on smaller entities. The Agency seeks public comment on all aspects of this Initial Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

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

D. National Environmental Policy Act

The Agency analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action will not have a significant impact on the environment. FMCSA has also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it would not result in any potential increase in emissions that are above the general conformity rule's de minimis emission threshold levels (40 CFR 93.153(c)(2)). A copy of the Environment Assessment is available in the docket.

E. Executive Order 13132 (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. This action has been analyzed in accordance with E.O. 13132. FMCSA has determined this rule would not have a substantial direct effect on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

F. Privacy Impact Assessment

FMCSA conducted a Privacy Threshold Analysis (PTA) for the proposed rule on hours of service and determined that it is not a privacy-sensitive rulemaking because the rule will not require any collection, maintenance, or dissemination of Personally Identifiable Information (PII) from or about members of the public.

G. Executive Order 12630 (Taking of Private Property)

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

H. Executive Order 12988 (Civil Justice Reform)

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

I. Executive Order 13045 (Protection of Children)

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

J. Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a "significant energy action" under that order. Though it is a "significant regulatory action" under Executive Order 12866, it 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.

K. Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this NPRM in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact that could result from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. None of the alternatives analyzed in the Agency's EA, discussed under NEPA, would result in high and adverse environmental impacts.

L. Unfunded Mandate Reform Act

The Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the net expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $140.3 million or more in any one year. Though this rule would not result in a net expenditure at this level, the economic impacts of the proposed rule have been analyzed in the RIA.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA is proposing to amend 49 CFR Chapter III, parts 385, 386, 390, and 395 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350, Pub. L. 107–87; and 49 CFR 1.73.

2. In Appendix B to part 385, amend section VII, List of Acute and Critical Violations, as follows:

a. Revise the entries for § 395.3(a)(1) and § 395.3(a)(2);

b. Add two entries for § 395.3(a)(3) and one entry for § 395.3(a)(4); and

c. Remove the entries for § 395.3(c)(1), § 395.3(c)(2), and § 395.1(o).

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

§ 395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive without taking an off-duty period of at least 10/11 consecutive hours prior to driving (critical).

§ 395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive or be on duty after the end of the 14th hour after coming on duty and after the end of the 16th hour after coming on duty on 2 days out of the previous 168 consecutive hours (critical).

§ 395.3(a)(3) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 10/11 hours (critical).

§ 395.3(a)(3) Requiring or permitting a property-carrying commercial motor vehicle driver to drive if more than 7 hours have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes (critical).

§ 395.3(a)(4) Requiring or permitting a property-carrying commercial motor vehicle driver to be on duty more than 13 hours during a 14-hour or 16-hour driving window (critical).

* * * * *

3. Amend Appendix C to part 385 as follows:

a. Revise the entries for § 395.3(a)(1) and § 395.3(a)(2);

b. Add two entries for § 395.3(a)(3) and one entry for § 395.3(a)(4);

c. Remove the entries for § 395.3(c)(1), § 395.3(c)(2), and § 395.1(o).

Appendix C to Part 385—Regulations Pertaining to Remedial Directives in Part 385, Subpart J

* * * * *

§ 395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving.

§ 395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive or be on duty after the end of the 14th hour after coming on duty and after the end of the 16th hour after coming on duty on 2 days out of the previous 168 consecutive hours.

§ 395.3(a)(3) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 10/11 hours.

§ 395.3(a)(3) Requiring or permitting a property-carrying commercial motor vehicle driver to drive if more than 7 hours have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes.

§ 395.3(a)(4) Requiring or permitting a property-carrying commercial motor vehicle driver to be on duty more than 13 hours during a 14-hour or 16-hour driving window.

* * * * *

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

4. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 521, 5123, 13301, 13902, 14915, 31132–31133, 31136, 31144, 31151, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

5. Amend Appendix B to part 386 by adding a new paragraph (a)(6) to read as follows:

Appendix B to Part 386—Penalty Schedule; Violations and Maximum Civil Penalties

* * * * *

(a) * * *

(6) *Egregious violations of driving-time limits in 49 CFR part 395.* A driver who exceeds, and a motor carrier that requires or permits a driver to exceed, by more than 3 hours the 10/11-hour driving-time limit in 49 CFR 395.3(a) or the 10-hour driving-time limit in 49 CFR 395.5(a), as applicable, shall be deemed to have committed an egregious driving-time limit violation. In instances of an egregious driving-time violation, the Agency will consider the "gravity of the violation," for purposes of 49 U.S.C. 521(b)(2)(D), sufficient to warrant imposition of penalties up to the maximum permitted by law.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

6. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

7. Amend § 390.23, by revising paragraph (c)(2) introductory text to read as follows:

§ 390.23 Relief from regulations.

* * * * *

(c) * * *

(2) The driver has had at least 34 consecutive hours off duty, including two consecutive periods from midnight to 6 a.m. when:

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

8. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and § 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; Sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

9. Amend § 395.1 as follows:

a. Revise paragraphs (b)(1), (d)(2), and (e)(1)(iv), (e)(2) introductory text, (e)(2)(v), (e)(2)(viii), (g)(1), and (g)(2)(ii);

b. Remove and reserve paragraph (o); and

c. Remove paragraph (q).

§ 395.1 Scope of rules in this part.

* * * * *

(b) * * *

(1) *Adverse driving conditions.* Except as provided in paragraph (h)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time permitted by §§ 395.3(a) or 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(ii) After the end of the 14th or 16th hour since coming on duty following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles, pursuant to § 395.3(a)(2);

(iii) For more than 12 hours in the aggregate following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles; or

(iv) After he/she has been on duty 15 hours following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles.

* * * * *

(d) * * *

(2) In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site. Such waiting time shall be recorded as "off duty" for purposes of §§ 395.8. 395.15, and 395.16, with remarks or annotations to indicate the specific off-duty periods that are waiting time, or on a separate "waiting time" line on the record of duty status to show that off-duty time is also waiting time. Waiting time shall not be included in calculation of the 14- or 16-hour duty period in § 395.3(a)(2). Specially trained drivers of such commercial motor vehicles are not eligible to use the provisions of § 395.1(e)(1).

(e) * * *

(1) * * *

(iv)(A) A property-carrying commercial motor vehicle driver does not exceed 10/11 hours maximum driving time following 10 consecutive hours off duty; or

(B) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and

* * * * *

(2) *Operators of property-carrying commercial motor vehicles not requiring a commercial driver's license.* Except as provided in this paragraph, a driver is exempt from the requirements of § 395.3 and § 395.8 and ineligible to use the provisions of § 395.1(e)(1) and (g) if:

* * * * *

(v) The driver does not drive more than 10 hours following at least 10 consecutive hours off duty;

* * * * *

(viii) Any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours that includes two consecutive periods from midnight to 6 a.m.; the beginning of an off-duty period of 34 or more consecutive hours must be at least 168 hours after the beginning of the last such off-duty period.

* * * * *

(g) * * *

(1) *Property-carrying commercial motor vehicle.*—

(i) *In General.* A driver who operates a property-carrying commercial motor vehicle equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter,

(A) Must, before driving, accumulate

(*1*) At least 10 consecutive hours off duty;

(*2*) At least 10 consecutive hours of sleeper-berth time;

(*3*) A combination of consecutive sleeper-berth and off-duty time amounting to at least 10 hours; or

(*4*) The equivalent of at least 10 consecutive hours off duty if the driver does not comply with paragraph (g)(1)(i)(A)(1), (2), or (3) of this section;

(B) May not drive more than 10/11 hours following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1) through (4) of this section; however, driving is permitted only if 7 hours or less have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes; and

(C) May not be on duty for more than the 13-hour period in § 395.3(a)(4) or drive beyond the 14- or 16-hour driving window in § 395.3(a)(2) after coming on duty following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1)–(4) of this section; and

(D) Must exclude from the calculation of the 14- or 16-hour driving window in § 395.3(a)(2) any sleeper-berth period of at least 8 but less than 10 consecutive hours.

(ii) Specific requirements.—The following rules apply in determining compliance with paragraph (g)(1)(i) of this section:

(A) The term "equivalent of at least 10 consecutive hours off duty" means a period of

(*1*) At least 8 but less than 10 consecutive hours in a sleeper berth, and

(*2*) A separate period of at least 2 but less than 10 consecutive hours either in the sleeper berth or off duty, or any combination thereof.

(B) Calculation of the 10/11-hour driving limit includes all driving time; compliance must be re-calculated from the end of the first of the two periods used to comply with paragraph (g)(1)(ii)(A) of this section.

(C) Calculation of the 14- or 16-hour limit in § 395.3(a)(2) includes all time except any sleeper-berth period of at least 8 but less than 10 consecutive hours and up to 2 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 8 but less than 10 consecutive hours in the sleeper berth; compliance must be re-calculated from the end of the first of the two periods used to comply with the requirements of paragraph (g)(1)(ii)(A) of this section.

(2) * * *

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 10/11 hours;

* * * * *

(o) [Reserved]

* * * * *

10. Amend § 395.2 by revising the definition of "on duty time" to read as follows:

§ 395.2 Definitions.

* * * * *

On-duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. *On-duty time* shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time;*

(4) All time in or on a commercial motor vehicle, other than:

(i) Time spent resting in or on a parked vehicle;

(ii) Time spent resting in a *sleeper berth;* or

(iii) Up to 2 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth;

(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, to comply with the random, reasonable suspicion, post-crash, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;

(8) Performing any other work in the capacity, employ, or service of, a motor carrier; and

(9) Performing any compensated work for a person who is not a motor carrier.

* * * * *

11. Revise § 395.3 to read as follows:

§ 395.3 Maximum driving time for property-carrying vehicles.

(a) Except as otherwise provided in § 395.1, no motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, unless the driver complies with the following requirements:

(1) *Start of work shift.* A driver may not drive without first taking 10 consecutive hours off duty;

(2) *Driving window.* (i) *In General.*—A driver may drive only during a driving window of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. The driver may not drive after the end of the driving window without first taking 10 consecutive hours off duty.

(ii) *Exception.*—A driver may drive during a driving window of 16 consecutive hours after coming on duty following 10 consecutive hours off duty on no more than 2 days out of the previous 168 consecutive hours. The driver may not drive after the end of the driving window without first taking 10 consecutive hours off duty.

(iii) Drivers who are on duty after the end of the 14th hour after coming on duty are deemed to have used a 16-hour driving window.

(iv) Drivers must go off duty by the end of the 14th or 16th consecutive hour after coming on duty.

(3) *Driving time and rest breaks.* A driver may drive a total of 10/11 hours during the on-duty period specified in paragraph (a)(4) of this section, but driving is permitted only if 7 hours or less have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes.

(4) *On-duty period.* A driver may be on duty no more than 13 hours during the 14-hour or 16-hour driving window.

(b) No motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any period of 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

(c)(1) Any period of 7 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two consecutive periods from midnight to 6 a.m.; or

(2) Any period of 8 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two consecutive periods from midnight to 6 a.m.

(d) A driver may not take an off-duty period allowed by paragraph (c) of this section to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days until 168 or more consecutive hours have passed since the beginning of the last such off-duty period. When a driver takes more than one off-duty period of 34 or more consecutive hours within a period of 168 consecutive hours, he or she must indicate in the Remarks section of the record of duty status which such off-duty period is being used to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days.

Issued on: December 20, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–32251 Filed 12–23–10; 11:15 am]

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Federal Register

Wednesday,
December 29, 2010

Part IV

Department of Homeland Security

U.S. Customs and Border Protection

Expansion of Global Entry Pilot to Mexican Nationals; Utilization of Global Entry Kiosks by NEXUS and SENTRI Participants; Notices

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2006–0037]

Expansion of Global Entry Pilot to Mexican Nationals

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice and request for comments.

SUMMARY: U.S. Customs and Border Protection (CBP) is conducting an international trusted traveler pilot program, referred to as the Global Entry pilot, at several major U.S. airports. Currently, eligibility is limited to U.S. citizens, U.S. nationals, U.S. lawful permanent residents (LPRs), and certain eligible citizens of the Netherlands. This document announces that pursuant to a Joint Declaration between the U.S. Department of Homeland Security and the Secretariat of Governance of the United Mexican States, CBP is expanding eligibility for participation in the Global Entry pilot to include qualified nationals of Mexico who otherwise satisfy the requirements for participation in the Global Entry pilot.

DATES: *Effective Dates:* The expansion of eligibility in the Global Entry pilot to qualified nationals of Mexico will occur on December 29, 2010. Applications are currently being accepted from U.S. citizens, U.S. nationals, U.S. lawful permanent residents, and certain eligible citizens of the Netherlands and will be accepted for the duration of the pilot. Applications will be accepted from nationals of Mexico beginning December 29, 2010. Comments concerning this notice and all aspects of the announced pilot may be submitted throughout the duration of the pilot.

ADDRESSES: You may submit comments, identified by "USCBP–2006–0037," by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW., Washington, DC 20229.

Instructions: All submissions received must include the agency name, document title, and docket number (USCBP–2006–0037) for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

Applications for the Global Entry pilot are available via the CBP Global Entry Web site, *http://www.globalentry.gov* or through the Global On-Line Enrollment System (GOES) Web site, *https://goes-app.cbp.dhs.gov.* Applications must be completed and submitted electronically.

FOR FURTHER INFORMATION CONTACT: Larry Panetta, Office of Field Operations, (202) 344–1253.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on April 11, 2008 (73 FR 19861), CBP announced an international trusted traveler pilot program, then referred to as International Registered Traveler (IRT) program, which was scheduled to commence operations at three initial U.S. airports on June 10, 2008. In a subsequent notice published in the **Federal Register** on May 27, 2008 (73 FR 30416), CBP changed the name of the pilot program from IRT to Global Entry and moved up the starting date to June 6, 2008.

The Global Entry pilot allows for the expedited clearance of pre-approved, low-risk travelers into the United States. Currently, eligibility is limited to U.S. citizens, U.S. nationals, U.S. lawful permanent residents (LPRs), and certain eligible citizens of the Netherlands. The initial **Federal Register** notice published on April 11, 2008 contained a detailed description of the program, the eligibility criteria and the application and selection process, and the initial airport locations: John F. Kennedy International Airport, Jamaica, New York, Terminal 4 (JFK); the George Bush Intercontinental Airport, Houston, Texas (IAH); and the Washington Dulles International Airport, Sterling, Virginia (IAD). CBP chose these initial airports due to the large numbers of travelers that arrive at those locations from outside the United States.

On August 13, 2008, in a notice published in the **Federal Register** (73 FR 47204), CBP announced that the Global Entry pilot had expanded to include all terminals at JFK and four additional airports: Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA). Additionally, on April 23, 2009, in a notice published in the **Federal Register** (74 FR 18586), pursuant to an arrangement between the United States and the Netherlands, CBP expanded eligibility for participation in the Global Entry pilot to include citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands.

On August 10, 2009, in a notice published in the **Federal Register** (74 FR 39965), CBP announced that the Global Entry pilot had again expanded to include thirteen additional airports: Newark Liberty International Airport, Newark, New Jersey (EWR); San Francisco International Airport, San Francisco, California (SFO); Orlando International Airport, Orlando, Florida (MCO); Detroit Metropolitan Wayne County Airport, Romulus, Michigan (DTW); Dallas Fort Worth International Airport, Dallas, Texas (DFW); Honolulu International Airport, Honolulu, Hawaii (HNL); Boston-Logan International Airport, Boston, Massachusetts (BOS); Las Vegas-McCarran International Airport, Las Vegas, Nevada (LAS); Sanford-Orlando International Airport, Sanford, Florida (SSB); Seattle-Tacoma International Airport-SEATAC, Seattle, Washington (STT); Philadelphia International Airport, Philadelphia, Pennsylvania (PHL); San Juan-Luis Munos Marin International Airport, San Juan, Puerto Rico (SAJ) and Ft. Lauderdale Hollywood International Airport, Fort Lauderdale, Florida (FLL).

Operations

The Global Entry pilot allows pilot participants expedited entry into the United States at any of the designated airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each airport. The Global Entry pilot uses fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant.

Global Entry pilot participants do not have to wait in the regular passport control primary inspection lines. After arriving at the FIS area, participants proceed directly to the Global Entry kiosk. A sticker affixed to the participant's passport at the time of acceptance in the Global Entry pilot

provides visual identification that the individual can be referred to the kiosk.

After arriving at the kiosk, participants activate the system by inserting either a machine-readable passport or a machine-readable U.S. permanent resident card (Form I–551) into the document reader. On-screen instructions guide participants to provide fingerprints electronically. These fingerprints are compared with the fingerprint biometrics on file to validate identity and confirm that the individual is a member of the program. Participants are also prompted to look at the camera for a digital photograph and to respond to several customs declaration questions by use of a touch-screen.

When the procedures at the kiosk have been successfully completed, participants are issued a transaction receipt. This receipt must be provided along with the passport or permanent resident card to the CBP Officer at the exit control area who will examine and inspect these documents. CBP officers stationed in booths next to the kiosk lanes also oversee activities at the kiosk.

Declarations

When using the Global Entry kiosks, Global Entry pilot participants are required to declare all articles being brought into the U.S. pursuant to 19 CFR 148.11.

If a Global Entry pilot participant declares any of the following, the kiosk redirects that user to the head of the line at the nearest, open passport control, primary inspection station:

(a) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;

(b) More than $10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or

(c) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, controlled substances, fireworks, Cuban goods, and plants.

Global Entry pilot participants may also be subject to further examination and inspection as determined by CBP Officers at any time during the arrival process.

For a more detailed description of the Global Entry pilot, please refer to the April 11, 2008 **Federal Register** notice, 73 FR 19861.

Notice of Proposed Rulemaking To Establish the Global Entry Pilot as a Permanent Program

In a Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on November 19, 2009 (74 FR 59932), CBP proposed establishing the Global Entry pilot as a permanent voluntary international trusted traveler program which would operate in a manner similar to the Global Entry pilot. The comment period has closed and CBP is in the process of analyzing the comments. As provided in the NPRM, current participants in the Global Entry pilot would be automatically enrolled in Global Entry once the permanent Global Entry program is finalized. Although it is projected that the Global Entry program will eventually operate at all major international airports, at the start of the program, it is anticipated that its operation would initially be limited to the airports participating in the pilot.

Expanded Eligibility for the Global Entry Pilot

Eligibility criteria for participation in the Global Entry pilot are also set forth in detail in the April 11, 2008 **Federal Register** notice. To date, only U.S. citizens, U.S. nationals, U.S. LPRs, and certain citizens of the Netherlands are eligible to participate in the pilot. However, as explained in the November 19, 2009 NPRM, CBP is working to expand the eligibility of the Global Entry pilot to certain nonimmigrant aliens from countries that have entered into arrangements with CBP concerning international trusted traveler programs. The notice stated that such expansions of the pilot would be announced by publication in the **Federal Register** and would include the country and any conditions that may apply based on the terms of the arrangement. The notice also stated that CBP anticipates that if the United States enters into such a Global Entry arrangement during the period of the pilot and announces the arrangement in the **Federal Register**, the participating citizens of that country would be automatically enrolled in the permanent Global Entry program once it is established.

Expansion of Global Entry Pilot To Include Nationals of Mexico

On November 30, 2010, the U.S. Department of Homeland Security signed a Joint Declaration with the Secretariat of Governance of the United Mexican States regarding cooperation on the development of an international trusted traveler pilot consisting of two phases. Phase 1 is the CBP Global Entry phase expected to offer expedited travel into the United States for Mexican nationals who meet CBP Global Entry program requirements following screening of applicants by both countries. Phase 2 is the Mexico Trusted Traveler Program phase expected to include development of a Mexican trusted traveler program that offers expedited travel to Mexico for U.S. citizens and Mexican nationals and other eligible applicants, who meet mutually determined criteria.

Consistent with Phase 1 of this Joint Declaration, CBP is expanding eligibility for the Global Entry pilot. Specifically, nationals of Mexico will now be able to apply for participation in the Global Entry pilot. In order to participate, Mexican nationals will be required to complete the on-line application located on the GOES Web site, pay the non-refundable $100 per person applicant processing fee, and satisfy all the requirements of the Global Entry pilot.

Based on the Joint Declaration, Mexican nationals will be permitted to participate in the Global Entry pilot only upon successful completion of a thorough risk assessment by both CBP and the Mexican Government. As is the case with all Global Entry pilot applicants, an individual who is inadmissible to the United States under U.S. immigration law is ineligible to participate in the Global Entry pilot. Applications from such individuals will automatically be rejected. Applications for the Global Entry pilot may also be rejected if the applicant has ever been convicted of a criminal offense, or if the individual has ever been found in violation of customs or immigration laws, or of any criminal law. Additionally, an applicant will not be accepted for participation in the Global Entry pilot if CBP determines that the applicant presents a potential risk of terrorism, or criminality (including smuggling), or if CBP cannot sufficiently determine that the applicant meets all the program eligibility criteria. CBP will be accepting applications from eligible nationals of Mexico beginning December 29, 2010. Additional information on eligibility will be announced at *http://www.globalentry.gov*.

All other aspects of the Global Entry pilot as described in the previous notices remain in effect.

U.S. Citizens Participation in Mexico's Trusted Traveler Program

Consistent with Phase 2 of the Joint Declaration with the Mexican government, U.S. citizens who participate in the Global Entry pilot will have the option to apply for participation in Mexico's trusted traveler program, once such a program is established. Once that program is established, it will be announced on CBP's Web site.

Dated: December 23, 2010.

Thomas S. Winkowski,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 2010–32832 Filed 12–28–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2010–0033]

Utilization of Global Entry Kiosks by NEXUS and SENTRI Participants

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice and request for comments.

SUMMARY: U.S. Customs and Border Protection (CBP) operates several international trusted traveler programs to provide expedited entry into the United States at designated ports of entry for pre-approved travelers. Through the utilization of automated kiosks, the Global Entry pilot program allows CBP to expedite clearance of pre-approved, low-risk air travelers arriving in the United States. In this notice, CBP is announcing that it is expanding two other trusted traveler programs, NEXUS and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), to permit participants of these programs currently in good standing to utilize Global Entry kiosks as part of their NEXUS or SENTRI membership. CBP also is describing the terms and conditions for such use. NEXUS is a program jointly administered by the United States and Canada that allows certain pre-approved, low-risk travelers expedited processing for travel between the United States and Canada. The SENTRI trusted traveler program allows certain pre-approved, low-risk travelers expedited entry at specified land border ports along the U.S.-Mexico border.

DATES: *Effective Dates:* Eligible NEXUS or SENTRI participants may begin to utilize the Global Entry kiosks immediately upon notification of eligibility from CBP. Comments concerning this notice and all aspects of the announced Global Entry pilot may be submitted throughout the duration of the pilot.

ADDRESSES: You may submit comments, identified by "USCBP–2010–0033," by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW., Washington, DC 20229.

Instructions: All submissions received must include the agency name, document title, and docket number (USCBP–2010–0033) for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

Applications for NEXUS, SENTRI and the Global Entry pilot are available through the Global Online Enrollment System (GOES) via the GOES Web site, *https://goes-app.cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Panetta, Office of Field Operations, (202) 344–1253.

SUPPLEMENTARY INFORMATION:

Background

CBP operates several voluntary trusted traveler programs to provide expedited travel for certain pre-approved travelers. While each program caters to a different set of travelers based on the program's unique eligibility criteria, any applicant to a trusted traveler program undergoes the same CBP pre-screening process. The three trusted traveler programs relevant to this document are described below.

NEXUS Trusted Traveler Program

NEXUS is a joint trusted traveler program between the United States and Canada. It was established in 2002 as part of the U.S.-Canada Shared Border Accord. NEXUS allows pre-approved, low-risk travelers expedited processing for travel between the United States and Canada at dedicated processing lanes at designated northern border ports of entry, at NEXUS kiosks at U.S. pre-clearance airports in Canada, and at marine reporting locations. An applicant may qualify to participate in NEXUS if he or she is a citizen or lawful permanent resident of the United States or Canada and voluntarily undergoes a thorough background check by U.S. and Canadian authorities against criminal, law enforcement, customs, immigration, and terrorist databases, a 10-fingerprint law enforcement check and a personal interview with a CBP officer. An applicant is ineligible to participate in NEXUS if inadmissible to the United States or Canada under either U.S. or Canadian immigration law. Any one of the following risk factors may disqualify an individual from NEXUS participation:

- The individual provides false or incomplete information on his or her application;
- The individual has been convicted of a criminal offense in any country;
- The individual is a subject of an ongoing investigation by any federal, state or local law enforcement agency in any country;
- The individual has been found to have violated any customs, agriculture, or immigration regulation or laws in any country;
- The individual is inadmissible to the United States or Canada under applicable immigration laws or regulations, including applicants with approved waivers of inadmissibility or parole documentation;
- The individual does not intend to lawfully reside in either Canada or the United States for the term of his or her NEXUS membership; or
- The individual cannot satisfy CBP of his or her low-risk status or meet other NEXUS program requirements.

To participate in NEXUS, both the United States and Canada must approve the individual's application. Denial of an application by either country will keep an applicant from participating in the NEXUS program. Applicants may apply on-line via the CBP GOES Web site, *https://goes-app.cbp.dhs.gov,* or on paper by mailing the application to Canada Border Services Agency. All qualified applicants are required to travel to a NEXUS Enrollment Center for an interview. If approved to participate in NEXUS, the individual will receive a membership identification card to use when entering Canada or the United States at all designated NEXUS air, land and marine ports of entry. Additional details regarding the NEXUS trusted traveler program can be found at *http://www.nexus.gov.*

SENTRI Trusted Traveler Program

CBP operates the Port Passenger Accelerated Service System (PORTPASS), a legacy system of the former Immigration and Naturalization Service, which identifies certain ports of entry as providing access to the United States for identified low-risk border

crossers. The system is described in detail in 8 CFR 235.7. One PORTPASS program is the Secure Electronic Network for Travelers Rapid Inspection (SENTRI). SENTRI currently allows expedited entry at specified land border ports along the U.S.-Mexico border for pre-approved, low-risk travelers. All applicants must voluntarily undergo a thorough background check against criminal, law enforcement, customs, immigration, and terrorist databases, a 10-fingerprint law enforcement check and a personal interview with a CBP officer. Any one of the following risk factors may disqualify an individual from SENTRI participation:

- The individual provides false or incomplete information on his or her application;
- The individual has been convicted of a criminal offense or has pending criminal charges, including outstanding warrants;
- The individual has been found to have violated any customs, agriculture, or immigration regulation or laws in any country;
- The individual is a subject of an ongoing investigation by any federal, state or local law enforcement agency in any country;
- The individual is inadmissible to the United States under applicable immigration laws or regulations, including applicants with approved waivers of inadmissibility or parole documentation;
- The individual cannot satisfy CBP of his or her low-risk status or meet other program requirements.

Applicants may apply for SENTRI on-line via the CBP GOES Web site. Once the individual's application is approved by CBP, the applicant is issued a Radio Frequency Identification Card (RFID) that identifies his or her record and status in the CBP database upon arrival at the U.S. port of entry. A decal is also issued to the applicant's vehicle or motorcycle. Additional details regarding the SENTRI trusted traveler program can be found at *http://www.sentri.gov.*

Global Entry Trusted Traveler Pilot Program

In a notice published in the **Federal Register** on April 11, 2008 (73 FR 19861), CBP announced an international trusted traveler pilot program, currently referred to as Global Entry, which allows for the expedited clearance of pre-approved, low-risk travelers into the United States. The Global Entry pilot program permits pilot participants expedited entry into the United States at any of the designated airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each airport.

The Global Entry pilot is currently operational at the following twenty airports: John F. Kennedy International Airport, Jamaica, New York, (JFK); George Bush Intercontinental Airport, Houston, Texas (IAH); Washington Dulles International Airport, Sterling, Virginia (IAD); Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); Miami International Airport, Miami, Florida (MIA), Newark Liberty International Airport, Newark, New Jersey (EWR); San Francisco International Airport, San Francisco, California (SFO); Orlando International Airport, Orlando, Florida (MCO); Detroit Metropolitan Wayne County Airport, Romulus, Michigan (DTW); Dallas Fort Worth International Airport, Dallas, Texas (DFW); Honolulu International Airport, Honolulu, Hawaii (HNL); Boston-Logan International Airport, Boston, Massachusetts (BOS); Las Vegas-McCarran International Airport, Las Vegas, Nevada (LAS); Sanford-Orlando International Airport, Sanford, Florida (SFB); Seattle-Tacoma International Airport-SEATAC, Seattle, Washington (SEA); Philadelphia International Airport, Philadelphia, Pennsylvania (PHL); San Juan-Luis Munos Marin International Airport, San Juan, Puerto Rico (SJU) and Ft. Lauderdale Hollywood International Airport, Fort Lauderdale, Florida (FLL).

Applicants may apply for the Global Entry pilot via the CBP GOES Web site. Participation is limited to U.S. citizens, U.S. nationals, U.S. lawful permanent residents (LPRs), citizens of the Netherlands who participate in Privium through the FLUX Arrangement and, as of December 29, 2010, Mexican nationals.[1] Global Entry uses fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant. For a detailed description of the Global Entry pilot program, including eligibility criteria, please refer to the April 11, 2008 **Federal Register** notice, 73 FR 19861; the May 27, 2008 **Federal Register** notice, 73 FR 30416; the August 13, 2008 **Federal Register** notice, 73 FR 47204; the April 23, 2009 **Federal Register** notice, 74 FR 18586; and the August 10, 2009 **Federal Register** notice, 74 FR 39965.

Notice of Proposed Rulemaking To Establish Global Entry as a Permanent Program

In a Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on November 19, 2009 (74 FR 59932), CBP proposed establishing Global Entry as a permanent voluntary international trusted traveler program which would operate in a manner similar to the Global Entry pilot program. The comment period has closed and CBP is in the process of analyzing the comments. As provided in the NPRM, current participants in the Global Entry pilot program would be automatically enrolled in Global Entry once the permanent Global Entry program is finalized. Although it is projected that the Global Entry program will eventually operate at all major U.S. international airports, at the start of the program, it is anticipated that its operation would initially be limited to the airports participating in the pilot program.

Expanded Utilization of Global Entry Kiosks

Section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C. 1365b, requires the Secretary of Homeland Security to create a program to expedite the screening and processing of pre-approved, low-risk air travelers into the United States. Under the IRTPA, expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority. *See* 8 U.S.C. 1365b(k)(1)(A).

Although the Global Entry kiosks were initially set up for the sole use of Global Entry participants, CBP intends to eventually allow participants in other CBP trusted traveler programs use of the Global Entry kiosks as a benefit of membership in those other trusted traveler programs. This expanded use of the kiosks will expedite the travel of participants of the other trusted traveler programs at more border crossings in the United States. It will also allow officers to better focus on identifying terrorists and other high risk travelers attempting to enter the United States. This document announces that eligible participants in NEXUS and SENTRI may use the Global Entry kiosks and the terms and conditions for such use.

[1] On December 29, 2010, CBP announced by a separate notice published in the **Federal Register** that, pursuant to a Joint Declaration between the U.S. Department of Homeland Security and the Secretariat of Governance of the United Mexican States, Mexican nationals are eligible to apply for participation in the Global Entry pilot program.

Current NEXUS Participants May Use Global Entry Kiosks

Terms and Conditions

A NEXUS participant who is in good standing in the NEXUS trusted traveler program will be eligible to utilize the Global Entry kiosks as a benefit of his or her NEXUS membership provided that he or she meets the age restrictions of the Global Entry pilot program (14 years of age or older) or the Global Entry permanent program once it is established. A NEXUS participant will only have access to the Global Entry kiosks for the amount of time remaining on his or her NEXUS membership. However, access to the Global Entry kiosks would continue for the full period of the NEXUS membership upon approval of the renewed NEXUS membership.

A NEXUS participant will receive an email from CBP, provided that an email address is supplied in his or her GOES account, informing the participant to log into his or her GOES account to confirm eligibility to use the Global Entry kiosks. CBP will also notify NEXUS participants of their eligibility by posting messages to their GOES accounts, mailing post cards to participants' mailing addresses, and by updating the Trusted Traveler Web sites. Any participant who needs further information as to whether he or she qualifies for the additional benefits, may call any Trusted Traveler enrollment center (phone numbers are provided at *http://www.globalentry.gov*). The eligibility notification will tell the participant whether or not the individual may immediately begin utilizing the Global Entry kiosks. If the individual is notified that he or she is not eligible to immediately begin utilizing the Global Entry kiosks, then the participant will need to contact the Enrollment Center to provide the missing information (fingerprints or passport). Once the NEXUS participant's complete information is on file, he or she may immediately begin using the Global Entry kiosks.

Use of the Global Entry kiosks is voluntary. Thus, providing additional information requested by CBP is voluntary, although it will be required in order to utilize the Global Entry kiosks. If a NEXUS participant elects not to provide the additional information, his or her status in the NEXUS program will remain unchanged.

Current SENTRI Participants Are Eligible To Use Global Entry Kiosks

Terms and Conditions

Mexican nationals, U.S. citizens and U.S. LPRs who are already participants in good standing in the SENTRI trusted traveler program and who meet the age restrictions of the Global Entry pilot program (14 years of age or older) or the age restrictions of the Global Entry permanent program once it is established, may utilize the Global Entry kiosks as a benefit of SENTRI membership if they follow the procedures described below. A Mexican national who is a SENTRI participant may utilize the Global Entry kiosks provided he or she successfully completes a thorough risk assessment by the Mexican government. A qualifying SENTRI participant will have access to Global Entry kiosks for the amount of time remaining on his or her SENTRI membership. However, access to the Global Entry kiosks would continue for the full period of the SENTRI membership upon approval of the renewed SENTRI membership.

A SENTRI participant will receive an email from CBP, provided that an email address is supplied in his or her GOES account, informing the participant to log in to his or her GOES account to confirm eligibility to use the Global Entry kiosks. CBP will also notify SENTRI participants of their eligibility by posting messages to their GOES accounts, mailing post cards to participants' mailing addresses, and by updating the Trusted Traveler Web sites. Any participant who needs further information as to whether he or she qualifies for the additional benefits, may call any Trusted Traveler enrollment center (phone numbers are provided at *http://www.globalentry.gov*). Before a SENTRI participant who is a Mexican national may be qualified to utilize the Global Entry kiosks he or she must indicate his or her wish to use the Global Entry kiosks on the GOES Web site by checking the relevant box. By checking the box, the person authorizes the U.S. government to release all relevant information to the Mexican government for the purpose of conducting a thorough risk assessment.

The eligibility notification will tell the participant whether or not the individual may immediately begin utilizing the Global Entry kiosks. If the individual is notified that he or she is not eligible to immediately begin utilizing the Global Entry kiosks, then the participant will need to contact the Enrollment Center to provide the missing information (fingerprints or passport). Once the SENTRI participant's complete information is on file, he or she may immediately begin using the Global Entry kiosks.

Use of the Global Entry kiosks is voluntary. Thus, providing the additional information to CBP is voluntary, although it will be required in order to use the Global Entry kiosks. If a SENTRI participant elects not to provide the additional information, his or her status in the SENTRI program will remain unchanged.

Operations

A NEXUS or qualified SENTRI participant does not have to wait in the regular passport control primary inspection line. After arriving at the FIS area, the participant would proceed directly to the Global Entry kiosks. After arriving at the kiosks, the NEXUS or qualified SENTRI participant will utilize the Global Entry kiosk through the same procedures as a Global Entry participant by inserting either a machine-readable passport or a machine-readable U.S. permanent resident card into the document reader. Machine readable passports and U.S. permanent resident cards are used for Global Entry kiosk transactions because, unlike NEXUS and SENTRI, Global Entry does not utilize membership cards. On-screen instructions will guide the participant to provide fingerprints electronically. These fingerprints are compared with the fingerprint biometrics on file to validate identity and confirm that the individual is a member of the program. The participant is also prompted to look at the camera for a digital photograph and to respond to several customs declaration questions by use of a touch-screen.

When the procedures at the kiosk have been successfully completed, the participant is issued a transaction receipt. This receipt must be provided along with the passport or permanent resident card to the CBP officer at the exit control area who will examine and inspect these documents. CBP officers stationed in booths next to the kiosk lanes also oversee activities at the kiosk.

Declarations

When using the Global Entry kiosks, NEXUS and qualified SENTRI participants are required under 19 CFR 148.11 to declare all articles being brought into the U.S. If a NEXUS or qualified SENTRI participant declares any of the following, the kiosk redirects that user to the head of the line at the nearest open passport control primary inspection station:

(a) Commercial merchandise or commercial samples, or items that

exceed the applicable personal exemption amount;

(b) More than $10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or

(c) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, controlled substances, fireworks, Cuban goods, and plants.

NEXUS or qualified SENTRI participants may also be subject to further examination and inspection as determined by CBP officers at any time during the arrival process.

For further details about the relevant airport procedures, please refer to the April 11, 2008 **Federal Register** notice, 73 FR 19861.

All other aspects of the NEXUS and SENTRI programs and the Global Entry pilot program (as described in the previous Global Entry pilot notices) are still in effect.

Dated: December 23, 2010.

Thomas S. Winkowski,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 2010–32829 Filed 12–28–10; 8:45 am]

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Federal Register

Wednesday,
December 29, 2010

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Framework for Ranking the Relative Importance of Puget Sound Chinook Salmon Populations and Watersheds for ESU Recovery and Delisting; Endangered and Threatened Species; Take of Anadromous Fish; Notices

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA111

Notice of Availability of a Draft Framework for Ranking the Relative Importance of Puget Sound Chinook Salmon Populations and Watersheds for ESU Recovery and Delisting

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

ACTION: Notice of availability; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce the availability of a draft technical framework for ranking recovery potential of populations of Puget Sound Chinook salmon and watersheds supporting them. The draft framework relies on the best available scientific information regarding the status and structure of Puget Sound Chinook salmon populations and their habitat. It builds on the work of the Puget Sound technical recovery team, which provided the technical foundation of the Puget Sound Chinook recovery plan (NMFS 2006). The technical recovery team identified the population structure of Puget Sound Chinook and recommended biological recovery criteria (Ruckelshaus *et al.* 2002; 2006). It did not advise, however, on the relative roles of the various populations in achieving recovery and no such roles were identified in the recovery plan completed for the species. In contrast, technical teams that developed recovery criteria for other species of salmon in the Northwest did recommend roles for individual populations in recovery. Following adoption of the Puget Sound Chinook salmon recovery plan, we convened an internal technical team to analyze the role each population should play in recovery. The draft technical framework described in this notice represents the internal technical team's recommendations. This notice also describes potential management implications of the framework.

DATES: Information and comments on the draft framework must be received at the appropriate address or fax number (*see* **ADDRESSES**), no later than 5 pm. on January 28, 2011. We encourage the public's involvement in reviewing this framework.

ADDRESSES: Information and comments on this draft framework should be submitted to Garth Griffin, Chief, Protected Resources Division, NMFS. Comments may also be sent via facsimile (fax) to (503) 230–5435 or by e-mail.

FOR FURTHER INFORMATION CONTACT: Elizabeth Babcock, NMFS, Northwest Region, (206) 526–4505.

SUPPLEMENTARY INFORMATION:

Background

Puget Sound Chinook salmon are listed as "threatened" under the Endangered Species Act (ESA) (70 FR 37160). The ESA defines species to include subspecies and "distinct population segments" (16 U.S.C. 1532). We have identified 52 distinct population segments of salmon and steelhead that spawn in California, Oregon, Washington, and Idaho. We have listed 28 of these as threatened or endangered under the ESA. For Pacific salmon, we recognize distinct population segments based on evolutionarily significant units, or ESUs. Nearly all of the salmon ESUs we identified are comprised of multiple populations. An ESU with healthy populations distributed throughout the ESU's range and exhibiting diverse life history characteristics will be resilient to natural variation and catastrophic events (McElhany *et al.* 2000). Thus, multiple populations contribute to ESU viability when they are healthy and are subject to non-correlated risks (McElhany *et. al.* 2000).

While all populations in an ESU may contribute to ESU viability, some may contribute more than others. McElhany *et al.* (2000) recommended several characteristics of a viable ESU. They recommended that an ESU should contain multiple populations; that some populations in an ESU should be geographically widespread while some should be geographically close; that populations should not all share common catastrophic risks; that populations that display diverse life-histories and phenotypes should be maintained; and that some populations should exceed the minimum viability guidelines.

In 1999 we established technical recovery teams to develop scientific advice for salmon and steelhead recovery throughout the Pacific Northwest. The teams identified the historical and current spawning populations, and the population structure, for each listed species. Relying on the work of McElhany *et al.* (2000) and other conservation literature, they established the biological criteria necessary for each ESU to have a high probability of persistence over time (referred to here as "biological recovery criteria"). Most of the teams also provided guidance on the role of each population in recovering the listed ESUs. For example, the team convened to provide advice on lower Columbia River salmon and steelhead determined the contribution of individual populations to ESU recovery and designated them as "primary, contributing, or sustaining" (McElhany, 2004).

The team we convened to provide scientific advice on Puget Sound Chinook identified the historical and current populations of the ESU and the population structure. The team identified 38 historical and 22 extant populations (Ruckelshaus *et al.* 2006). The team also advised on the biological recovery criteria for the ESU. The team did not, however, provide guidance on the relative role of individual populations in overall ESU recovery. In the recovery plan for Puget Sound Chinook (NMFS 2006), we accepted the biological recovery criteria as the applicable criteria for delisting the ESU. Although we identified certain of the 22 populations that must be at low risk of extinction for delisting to occur (NMFS, 2006), we did not attempt to otherwise supplement the team's work with guidance on the relative role of each population in recovery.

We explained in the recovery plan that we intended to continue working with states, tribes, and others to develop a process for identifying priority populations and watersheds.

NMFS believes that a systematic approach is needed to identify those Chinook salmon populations that should receive the highest priority for recovery activities, with the overarching goal of meeting ESU delisting criteria. This position is based on the premise that not all of the 22 Puget Sound Chinook salmon populations or their watersheds have the same role in contributing to the recovery of the ESU. Key considerations are the uniqueness, status, and physical location of the population, the present condition of the population's freshwater, estuarine and adjacent nearshore habitats, and the likelihood for preserving and restoring those habitats given present and likely future condition.

In the case of other salmon and steelhead species, we have found that technical information on the relative recovery roles of populations helps inform decision-making under the ESA. We therefore convened an internal team of NMFS technical experts to advise the agency on this aspect of Puget Sound Chinook recovery. We are mindful that recovery of an ESU under the ESA is not necessarily equivalent to the broad

sense recovery that would fulfill the expectations of Indian tribes with treaty-reserved fishing rights. We remain fully committed to broad sense recovery of all populations contributing to treaty Indian fisheries but acknowledge that this level of recovery is not necessarily the same as recovery under the ESA. This framework addresses only recovery under the ESA.

Biological Recovery Criteria

The draft technical framework builds on the work of the technical recovery team (Ruckelshaus *et al.* 2002; 2006). The technical recovery team identified five major bio-geographical regions within the Puget Sound Chinook ESU, based on biological and geological characteristics of each watershed and the probability of catastrophic risk to populations in close proximity to one another. Their biological recovery criteria, which incorporate the concepts developed by McElhany *et al.* (2000), are:

1. The viability status of all populations in the ESU is improved from current conditions.

2. At least two and up to four Chinook salmon populations in each of five bio-geographical regions within the ESU achieve viability, depending on the historical biological characteristics and acceptable risk levels for populations within each region.

3. At least one population from each major genetic and life history group historically present within each of the five bio-geographical regions is viable.

4. Tributaries to Puget Sound not identified as primary freshwater habitat for any of the 22 identified populations are functioning in a manner that is sufficient to support an ESU-wide recovery scenario.

5. Production of Chinook salmon from tributaries to Puget Sound not identified as primary freshwater habitat for any of the 22 identified populations occurs in a manner consistent with an ESU recovery.

6. Populations that do not meet the viability criteria for all VSP parameters (i.e. abundance, productivity, spatial structure and diversity) are sustained to provide ecological functions and preserve options for ESU recovery.

Together, these six criteria describe the status of Chinook salmon populations and the habitat conditions that would result in a naturally self-sustaining ESU with a high likelihood of persistence. Criteria 1, 2, 3, and 6 describe the conditions of extant populations and their primary freshwater areas within the ESU that are consistent with recovery. Criteria 4 and 5 describe the roles that habitat conditions and Chinook salmon juveniles and adults occurring in secondary habitat areas play in ESU viability.

Draft Technical Framework—Methods

The internal technical team developed an analytical approach that allowed it to assign an ESA recovery priority to each population based on the best available scientific information. Recognizing that biological populations are inseparable from their habitats, the team developed an approach that also allowed them to identify the relative importance of different habitat areas to Chinook recovery. The team first identified all watersheds in Puget Sound where Chinook salmon spawn, organized according to the Washington Department of Ecology classification system of water resource inventory areas. They identified the watersheds within each inventory area and the population occupying each watershed.

For each population, the technical team identified its bio-geographical region (using Ruckelshaus *et al.* (2002)) and "stock category." The stock categories were those that had been assigned to differentiate Puget Sound Chinook salmon in a separate process by state and tribal salmon managers. The managers assigned categories to stocks based on their origin (native or introduced) and whether the stock's watershed of origin historically supported a self-sustaining Chinook salmon population. Category 1 stocks are indigenous, genetically unique populations that are native to the watersheds where they originate, Category 2 stocks are non-native stocks, introduced into watersheds capable of sustaining natural production but that no longer contain indigenous populations. Category 3 stocks originate from watersheds that historically did not support natural spawning by Chinook salmon.

The team developed a rating scheme for each population and watershed that assigned scores of 0 to 3 for several indicators. For populations, the indicators were based on the criteria developed by McElhany *et al.* (2000) to describe a viable salmon population: Abundance, diversity, distribution, and productivity. For watersheds, the indicators were based on an existing analysis of habitat condition and value by Beecher *et al.* (1999), the relative value of adjacent estuaries to ESU populations, and NMFS' critical habitat designation for Puget Sound Chinook. The team summed the scores for each indicator to arrive at a total score for each population and each watershed, reflecting the viability status and uniqueness of each population, immediacy of risk to the population, and the condition and relative recovery value of the watersheds the populations inhabit.

The team next examined the relationship of each population to the six recovery criteria adopted in the recovery plan. The team assigned one point for each criterion met by the population. The team developed a rule set to determine whether a population met a specific criterion. Thus for this element a population could receive a score as high as 6. In the final step of its analysis, the team compared scores for the populations across all three categories (population viability, habitat status and use, and relationship to the recovery criteria). The team then divided populations into three categories, based on their relative total scores within their respective bio-geographical regions, which the team called Tier 1, Tier 2, and Tier 3.

The following discussion describes in more detail the method the team used to assign population viability scores and habitat status and use scores.

(1) Population Viability Scores

Abundance. The team considered the abundance of natural origin spawners and whether hatchery fish in the watershed were part of or separate from the ESU. The team rated the abundance of natural-origin spawners relative to the current carrying capacity of the habitat, factoring in the population's stock category assignment. For example, indigenous (category 1) populations at critical status received a higher score than indigenous populations identified as meeting the current capacity of the habitat. Introduced (category 2) populations were assigned lower scores compared to indigenous stocks for a given abundance status. With respect to hatchery programs, the team indicated whether hatchery fish are present, whether they are considered in or out of the ESU, whether they are managed to be separate from or integrated with the natural origin population, and whether they are produced for conservation or harvest augmentation purposes.

Diversity. To assess diversity the team considered the uniqueness of the population's life history within its bio-geographical region, the risk posed by non-native strays on the spawning grounds, and the proportion of juveniles that emigrate as yearlings versus sub-yearlings. The team relied on two indicators of uniqueness. First, the team assigned a score of 1 to 3 based on how many other populations of the same history type occurred within the bio-geographical region, with a score of 3

indicating the greatest uniqueness. Second, the team examined how much the genetic integrity of the natural population might be affected by the proportion of hatchery fish on the spawning grounds. To determine the "proportion of natural influence," the team relied on scores from an existing model (A. Appleby, unpublished WDFW data, 2005). The team assigned ratings, with a score of 3 indicating the greatest proportion of natural origin spawners and a score of 1 indicating the lowest.

The team also considered the proportion of non-native hatchery strays on the spawning grounds as an aspect of diversity. As with the risk presented by a low proportion of natural origin spawners, the team gave a higher score to populations with fewer non-native hatchery strays on the spawning grounds. Finally, the team considered populations with a substantial proportion of juvenile fish that emigrate seaward as yearlings as a rare and diminishing component of Puget Sound Chinook diversity. The team rated populations from 1 to 3, with the higher scores going to populations with a higher percentage of yearling emigrants.

Distribution. The team referred to this criterion as spatial structure. It identified five factors, each of which indicates some desirable aspect of population distribution. Some of the factors relate to the population, while others relate to the watershed. These factors are: (1) The watershed is in an area at the geographical boundary of the ESU; (2) the watershed bridges bio-geographical regions; (3) the population is a stronghold and thus a source for re-colonizing vacant habitat; (4) Chinook use the watershed extensively, in terms of miles; and (5) the area is important in preserving or re-establishing the sub-yearling life history type (as per Beechie *et al.* 2006). Populations meeting any one of the five factors received a rating of 3 while those meeting none of the five factors received a rating of 1.

Productivity. The team identified growth rate (noted as *lambda,* or λ) as the best indicator of productivity. It relied on NMFS' most recent status review (Good *et al.* 2005) as the best recent estimate of growth rates. To rate this indicator, the team considered whether the population's growth rate was above 1.0 (indicating an increasing population), or below 1.0 (indicating a declining population). The team's ratings also accounted for the population's "stock category," as described above under *Diversity.* The team reasoned that indigenous populations would be most important to recovery, while non-native populations would be of lesser value as they originate from relatively recent introductions that might feasibly be replaced with the same non-native stock through transfers. Thus Category 1 (indigenous) stocks with a growth rate less than one received a rating of 3, while those with a growth rate equal to or greater than 1 received a 2. Category 2 stocks (non-indigenous but part of the ESU) received a rating of 2 or 1, depending on whether the growth rate was above or below 1.0. Category 3 stocks (non-native and not part of the ESU) received a 0, or "not applicable" rating.

(2) Habitat Status and Use Scores

In response to salmon declines, the Washington Governor's natural resource cabinet convened a group of agency scientists to provide advice on statewide salmon recovery. The group produced a report that proposed a system for prioritizing watersheds for protection and restoration of wild salmon and steelhead (Beecher *et al.* 1999). The NMFS' team relied on two indicators from Beecher *et al.* (1999) that best reflect habitat value—one indicating current condition and one indicating the extent to which the watershed would benefit from preservation and restoration. The NMFS' team took the range of scores developed by Beecher *et al.* (1999) for each of these indicators and divided the range into 3 categories. This allowed the team to assign a score of 1 to 3 based on the scores from this larger range.

The team also assigned ratings for a nearshore value indicator, based on the assessment of the number of Chinook salmon populations that may benefit from the watershed's associated nearshore area for rearing and migration, given its geographic location relative to Chinook salmon population seaward migration routes. The highest score (3) was assigned for nearshore areas used by the greatest number of populations, with areas used by an intermediate number assigned a "2" and nearshore areas used by the least number scored a "1". The team also scored the watershed based on NMFS' designation of critical habitat (70 FR 52630). For freshwater areas, the team assigned a score of 2 if the area was designated as critical habitat and 0 if it was not.

(3) Cumulative Scores and Tier Assignments

After determining scores for the viability and habitat condition and use parameters, and considering each population's relationship to the six viability criteria, the team created index scores for each population by comparing the parameter scores for the populations in each bio-geographical region to an ESU-wide mean score. This allowed the team to make relative comparisons among populations for each parameter (viability, habitat condition and use, and relationship to the six viability criteria). The team then summed the index scores to obtain a cumulative index score for each population in the ESU.

The team then assigned each population to one of three recovery "Tiers" using the following rule set. Regardless of score, if a population would have to be viable for the ESU as a whole to meet the Ruckelshaus *et al.* (2002) viability criteria, the team designated it as a Tier 1 population. Because Ruckelshaus *et al.* (2002) recommended at least two viable populations per bio-geographical region, in those bio-geographical regions that only have two populations, the team designated both as Tier 1 populations. In bio-geographical regions that have more than two populations, the team assigned populations to a tier based on a comparison of each population's cumulative index score and relationship to the ESU mean. For those populations that were not assigned to Tier 1, the team compared individual population scores around a mean cumulative score for all populations in the ESU and assigned populations to Tier 2 and 3 based on whether the populations were above or below the mean score (NMFS, 2010).

Draft Technical Framework—Results

The individual and cumulative index scores for each category and tier rankings are shown in Table 1, below.

Consistent with the rule set described above the team assigned to Tier 1 both populations in the three bio-geographical regions that contain only two populations: The North and South Nooksack populations in the Georgia Strait bio-geographical region; the Mid-Hood Canal and Skokomish populations in the Hood Canal bio-geographical region; and the Elwha and Dungeness populations in the Strait of Juan de Fuca bio-geographical region. In the Whidbey bio-geographical region, which has more than two populations, the team assigned to Tier 1 all populations with cumulative index scores above the ESU mean: Upper Skagit, Suiattle, Cascade, Upper Sauk, Lower Sauk, and Lower Skagit. In the Central/South Sound bio-geographical region, there were not populations with cumulative index scores above the ESU mean. The team therefore assigned to Tier 1 the two populations with the highest cumulative

index scores, the White and Nisqually Rivers. The team assigned the North and South Fork Stillaguamish and Skykomish populations to Tier 2 and the Snoqualmie, Sammamish, Cedar and Puyallup populations to Tier 3.

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Table 1. Puget Sound Chinook salmon population recovery valueassignments based on cumulative VSP, habitat, and delisting criteria index scores for the population compared with the cumulative ESU-wide mean index score.

Puget Sound Chinook Populations	VSP Block Rating: Cumulative SCORE for Identified Populations	Habitat Block Rating: Cumulative SCORE for Watershed	Criteria Block Rating	VSP Index Score (Pop score/ESU Mean)	Habitat Index Score (Pop score/ESU Mean)	Criteria Index Score (Pop score/ESU Mean)	Total Index Scores	Cum. Index Score Above-Below ESU Mean	Above/Below ESU Mean Population Tier Assignments 2/	Assigned Recovery Tier: Tier 1	Tier 2	Tier 3
Georgia Strait												
NF Nooksack 1/	22	12	6	1.25	1.05	1.15	3.45	Above	1/	X		
SF Nooksack 1/	22	12	6	1.25	1.05	1.15	3.45	Above	1/	X		
Whidbey Basin												
Upper Skagit	19	13	5	1.08	1.13	0.96	3.17	Above	1	X		
Suiattle 1/	20	13	6	1.14	1.13	1.15	3.42	Above	1/	X		
Cascade	19	13	6	1.08	1.13	1.15	3.37	Above	1	X		
Upper Sauk	20	13	5	1.14	1.13	0.96	3.23	Above	1	X		
Lower Sauk	16	13	5	0.91	1.13	0.96	3.00	Above	1	X		
Lower Skagit	20	12	6	1.14	1.05	1.15	3.34	Above	1	X		
NF Stillaguamish	18	13	4	1.03	1.13	0.77	2.93	Below	2		X	
SF Stillaguamish	17	13	4	0.97	1.13	0.77	2.87	Below	2		X	
Skykomish	21	10	4	1.20	0.87	0.77	2.84	Below	2		X	
Snoqualmie	16	10	4	0.91	0.87	0.77	2.55	Below	3			X
Central/South Sound												
Sammamish	9	7	4	0.51	0.61	0.77	1.89	Below	3			X
Cedar	14	9	4	0.80	0.79	0.77	2.35	Below	3			X
Green	15	8	5	0.85	0.70	0.96	2.51	Below	3		X 4	
Puyallup	13	9	5	0.74	0.79	0.96	2.48	Below	3			X
White	17	9	6	0.97	0.79	1.15	2.90	Below	2	X 3		
Nisqually	14	11	6	0.80	0.96	1.15	2.91	Below	2	X 3		
Hood Canal												
Skokomish 1/	15	12	6	0.85	1.05	1.15	3.05	Above	1/	X		
Mid-Hood Canal 1/	18	12	6	1.03	1.05	1.15	3.22	Above	1/	X		
Strait of Juan de Fuca												
Elwha 1/	21	14	6	1.20	1.22	1.15	3.67	Above	1/	X		
Dungeness 1/	20	14	6	1.14	1.22	1.15	3.51	Above	1/	X		
ESU-Wide Mean	18	11	5				3.00	(std. dev = 0.44				

1/ A population is assigned as "Tier 1" if the population is required in the NMFS (2005) recovery plan for ESU recovery (i.e. Suiattle) or it is 1 of 2 populations in a biogeographical region.

2/ Populations with a total index score greater than the ESU-wide mean index score are assigned as Tier 1. If the total index score for the population is less than 1 standard deviation below the ESU-wide mean index score, the population is assigned to be Tier 2. If the total index score for the population is greater than 1 standard deviation below the mean, the population is assigned to Tier 3.

3/ Consistent with the requirement that at least two populations within each biogeographical region be recovered to a low extinction risk status, the two populations with the highest total index scores in the Central/South Sound region were assigned as Tier 1 populations.

4/ To ensure that at least one population in the region is recovered at a sufficient pace to allow for its potential inclusion as a Tier 1 population if needed, the Tier 3 population with the highest total index score in the Central/South Sound biogeographical region was assigned as Tier 2.

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Management Implications

We implement our authorities under the ESA in a variety of contexts. Under section 7(a)(2), all Federal agencies must ensure, in consultation with us, that their actions are not likely to jeopardize the continued existence of threatened Puget Sound Chinook or adversely modify their critical habitat. Under section 4(d) of the ESA, we have prohibited unauthorized take of Puget Sound Chinook. We may authorize take through various mechanisms, including approval under the 4(d) rule or under sections 7 and 10 of the ESA. Each of our authorities has specific standards and requires specific analysis, but all are subject to the ultimate section 7 requirement to avoid jeopardy to the species and destruction or adverse modification of critical habitat. We define jeopardy to mean actions that are reasonably expected to directly or indirectly appreciably reduce the likelihood of survival and recovery of

the species (50 CFR 402.02). We have an analytical framework for determining whether actions will result in the destruction or adverse modification of critical habitat (NMFS, 2005).

When we analyze a proposed action (*e.g.,* timber or fisheries harvest, dock construction, roadway development) under one of our ESA authorities, we consider which populations and habitat areas are affected by the action. Not all populations and habitats have equal value for the survival and recovery of an ESU. In evaluating a proposed action, we therefore consider the impacts on each affected population and habitat area, and how those impacts affect the overall viability of the population or conservation value of the habitat.

The population rankings in Table 1 reflect the team's determination of each population's relative role in recovery of the listed ESU. The recovery rankings proposed in the framework will inform our assessment of the effects of proposed actions on overall viability and conservation value under the ESA. In general, we expect actions that harm high-value populations would be more likely to reduce the chances of species survival and recovery than actions that harm low-value populations. A similar logic would apply to actions that harm high-value habitat areas and those that do not. We emphasize that these concepts only apply when we exercise our authority under the ESA. In other contexts we will emphasize the importance of achieving broad sense recovery of all populations in Puget Sound and Washington's coast, to satisfy tribal treaty rights and recreational and commercial fishing goals. NMFS acknowledges that consultations among fisheries managers and persons interested in the PRA will be ongoing, particularly about its applicability to ESA determinations regarding habitat actions that affect long term productivity of populations. It is not the intent of the PRA to allow actions that preclude the future productivity of a population or the ability to change its future status.

Public Comment and Availability of Final Framework

We seek comments from the public on the draft framework through the end of the comment period. We will consider all comments received by the end of the comment period in formulating a final framework. The full document describing the framework and the technical team's work is available on our Web site and by mail upon request. We will make the final framework available on our Northwest Regional Office Web site and by mail upon request following consideration of comments received. We are specifically interested in comments and information regarding (1) technical documentation upon which the framework is based and (2) the population ranking methods the technical team applied in the framework.

Persons wishing to read the full technical document can obtain an electronic copy (i.e., CD–ROM) by calling (503) 231–5400, or by e-mailing a request to *Joanna.Donnor@noaa.gov,* with the subject line "CD–ROM Request for Puget Sound Chinook Salmon Population Framework", Electronic copies of this document are also available online via the NMFS' Web site, *http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/PS-Chinook-Plan.cfm.*

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National Marine Fisheries Service (NMFS) 2010. Puget Sound Chinook Salmon Population Recovery Approach (PRA), NMFS Northwest Region Approach for Distinguishing Among Individual Puget Sound Chinook Salmon ESU Populations and Watersheds for ESA Consultation and Recovery Planning Purposes. November XX, 2010. XX p. Available on the NMFS Web site at: *www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/PS-Chinook-Plan.cfm.*

Ruckelshaus, M.H., K. Currens, R. Fuerstenberg, W. Graeber, K. Rawson, N. Sands, and J. Scott. 2002. Planning ranges and preliminary guidelines for the delisting and recovery of the Puget Sound Chinook salmon Evolutionarily Significant Unit. Puget Sound Technical Recovery Team. April 30, 2002. 19 p. Available on the Internet at: *http://research.nwfsc.noaa.gov/trt/trtpopESU.pdf.*

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Dated: December 22, 2010.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–32844 Filed 12–28–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA110

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: The Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife submitted to NMFS, pursuant to the protective regulations promulgated for Puget Sound Chinook salmon under Limit 6 of the Endangered Species Act (ESA) 4(d) Rule for salmon and steelhead, a jointly developed Resource Management Plan (RMP). The RMP specifies the future management of commercial, recreational, subsistence and tribal salmon fisheries potentially affecting listed Puget Sound Chinook salmon from May 1, 2010, through April 30, 2015. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to how the RMP addresses the criteria in Limit 6 of the ESA 4(d) Rule.

DATES: Written comments on the Secretary's proposed evaluation must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5 p.m. Pacific Standard Daylight Time on January 28, 2011.

ADDRESSES: Comments and requests for copies of the proposed evaluation should be addressed to Susan Bishop, Salmon Management Division, National Marine Fisheries Service, 7600 Sand Point Way, NE., Seattle, Washington 98115–0070, or faxed to (206) 526–6736. Comments on this proposed evaluation may be submitted by e-mail. The mailbox address for providing e-mail comments is *2010PSCHNKHARVEST.nwr@noaa.gov.* Include in the subject line the following document identifier: "2010 CHNK PSHARVEST proposed evaluation." The document is also available on the Internet at *http://www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/State-Tribal-Management/PS–Chinook-RMPs.cfm.*

FOR FURTHER INFORMATION CONTACT: Susan Bishop at phone number: (206) 526–4587, Puget Sound Harvest Team Leader or e-mail: *susan.bishop@noaa.gov* regarding the RMP.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU).

Electronic Access

The full texts of NMFS' proposed evaluation and proposed determination are available on the Internet at the NMFS, Salmon Management Division Web site at: *http://www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/State-Tribal-Management/PS-Chinook-RMPs.cfm.*

Background

In April, 2010, the Puget Sound Treaty Tribes and the WDFW (co-managers) provided a jointly developed RMP that encompasses Strait of Juan de Fuca and Puget Sound salmon fisheries affecting the Puget Sound Chinook salmon ESU. The RMP encompasses salmon and steelhead fisheries within the area defined by the Puget Sound Chinook salmon ESU, as well as the western Strait of Juan de Fuca, which is not within the ESU. The RMP is effective from May 1, 2010, through April 30, 2015. Harvest objectives specified in the RMP account for fisheries-related mortality of Puget Sound Chinook throughout its migratory range, from Oregon and Washington to southeast Alaska. The RMP also includes implementation, monitoring and evaluation procedures designed to ensure fisheries are consistent with these objectives.

On July 10, 2000, NMFS issued a rule under section 4(d) of the ESA (referred hereafter as the 4(d) Rule), establishing take prohibitions for 14 salmon and steelhead ESUs, including the Puget Sound Chinook salmon ESU (50 CFR 223.203(b)(6); July 10, 2000, 65 FR 42422). In 2005, as part of the final listing determinations for sixteen ESUs of West Coast salmon, NMFS amended and streamlined the previously promulgated 4(d) protective regulations for threatened salmon and steelhead (70 FR 37160, June 28, 2005). Under these regulations, the same set of fourteen limits was applied to all threatened Pacific salmon and steelhead ESUs or Distinct Population Segments (DPS). As required by § 223.203(b)(6) of the ESA 4(d) rule (50 CFR 223.203), the Secretary must determine pursuant to 50 CFR 223.209 (renumbered 50 CFR 223.204) and pursuant to the government to government processes therein whether the RMP for Puget Sound Chinook would appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook and other affected threatened ESUs.

Authority

Under section 4(d) of the ESA, 16 U.S.C. 1533(d), NMFS, by delegated authority from the Secretary of Commerce, is required to adopt such regulations as it deems necessary and advisable for the conservation of the species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids or are governed by a program that adequately limits impacts on listed salmonids, and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a RMP developed jointly within the continuing jurisdiction of *United States* v. *Washington* by the State of Washington and the Tribes and determined by NMFS to be in accordance with the provisions of 50 CFR 223.203(b)(6), (*i.e.,* Limit 6 of the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000)). In 2005, as part of the final listing determinations for sixteen Evolutionarily Significant Units of West Coast salmon, NMFS amended and streamlined the previously promulgated 4(d) protective regulations for threatened salmon and steelhead (70 FR 37160, June 28, 2005). Under these regulations, the same set of fourteen limits was applied to all threatened Pacific salmon and steelhead ESUs or DPSs.

Dated: December 22, 2010.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–32845 Filed 12–28–10; 8:45 am]

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Federal Register

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